

Chapter 1

GENERAL PROVISIONS

[HISTORY: Adopted by the Town Meeting of the Town of Marion as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Adoption of Code; General Penalty

[Adopted as Art. I, Secs. 1 through 4, of the Bylaws]

§ 1-1. Title.

The following provisions shall constitute the bylaws of the Town of Marion, and acceptance and approval of these bylaws shall specifically repeal any and all bylaws in force prior to said acceptance and approval.

§ 1-2. Effect of repeal.

The repeal of a bylaw shall not thereby have the effect of reviving a bylaw theretofore repealed.

§ 1-3. Manner of amendment and repeal.

Any and all of these bylaws may be repealed or amended or other bylaws may be adopted at any Town Meeting, an article or articles for that purpose having been inserted in the warrant for such meeting.

§ 1-4. General penalty.

Whoever violates any of the provisions of these bylaws whereby any act or thing is enjoined or prohibited shall, unless other provision is made, forfeit and pay a fine in the amount of \$~~100~~300 for each offense. Each day on which a violation exists shall be deemed a separate violation.

§ 1-5. Codification of Town bylaws.

- A. The Town Clerk or an agent designated by the Town Clerk shall be authorized to assign appropriate numbers to sections, subsections, paragraphs and subparagraphs of Town general bylaws and zoning bylaws, where none is approved by Town Meeting.
- B. Where Town Meeting has approved numbering of sections, subsections, paragraphs and subparagraphs of Town general bylaws and zoning bylaws, the Town Clerk or an agent designated by the Town Clerk, after consultation with the Town Administrator, shall be authorized to make nonsubstantive editorial revisions to the numbering to ensure consistent and appropriate sequencing, organization and numbering of the bylaws.

ARTICLE II
Noncriminal Disposition of Violations
[Adopted as Art. XXIV and Art. XXV of the Bylaws]

§ 1-6. Noncriminal disposition of violations of marine regulations. [Amended 4-28-2003 ATM by Art. 21]

- A. The Harbormaster, or any other official taking cognizance of a violation of any of the following regulations which he is empowered to enforce, as the same may be amended from time to time, as an alternative to initiating criminal proceeding, may give to the offender a written notice to appear before the Clerk of the District Court having jurisdiction thereof for ~~non-criminal~~noncriminal disposition as provided in MGL c. 40, § 21D:
- (1) Shellfish Regulations for Marion.
 - (2) Harbormaster's Mooring and Anchorage Rules and Regulations for Harbors in Marion, Massachusetts.
 - (3) Rules and Regulations for Use of Old Landing and Island Wharves.
 - (4) Town of Marion Dinghy Rack Regulations.
 - (5) ~~Motor Boat Laws~~Motorboat laws (Chapter 118).
- B. The ~~non-criminal~~noncriminal disposition of such a violation shall be in the sole discretion of the enforcing person, and the availability of such disposition shall not be a bar to criminal disposition of any such violation. No person shall have a right to ~~non-criminal~~noncriminal disposition of such a violation.
- C. Each violation of the above--enumerated regulations shall be punishable in the event of ~~non-criminal~~noncriminal disposition by a fine of \$25, unless another amount is provided for in these bylaws.
- D. Each day on which any violation exists shall be deemed a separate violation.
- E. Each violation of the above--enumerated regulations shall be punishable in the event of criminal disposition as otherwise provided by law.

§ 1-7. Noncriminal disposition of non-marine violations.

Any officer taking cognizance of a violation of any of these bylaws or any rule or regulation of any officer, board or department of the Town, except marine resources, which he is empowered to enforce, as an alternative to initiating criminal proceedings, may give to the offender a written notice to appear before the Clerk of the District Court for ~~non-criminal~~noncriminal disposition as provided in MGL c. 40, § 21D. Except as otherwise provided by general law or by the express terms of any bylaw, rule or regulation, the specific penalty for any bylaw, rule or regulation of the Town shall be \$100. Each day on which any violation exists shall be deemed a separate violation. The ~~non-criminal~~noncriminal disposition of such a violation shall be in the sole discretion of the enforcing person, and the availability of such disposition shall not be a bar to criminal disposition of any such violation. No person shall have a right to ~~non-criminal~~noncriminal disposition of such a violation. For marine resources violations, see § 1-6 of this article.

Chapter 7

BOARDS, COMMISSIONS AND COMMITTEES

[HISTORY: Adopted by the Town Meeting of the Town of Marion as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Finance Committee

[Adopted as Art. III, Sec. 2, of the Bylaws; amended 5-16-2006 ATM by Art. 16]

§ 7-1. Powers and duties; members; appointments; terms of office.

The Finance Committee shall have all the powers and duties as set forth in the General Laws, and shall consist of five regular members and up to three associate members. Associate members may vote in the temporary absence of a regular member on the regular business of the Finance Committee but may serve and participate on any subcommittees (e.g., Capital Planning Subcommittee) of the Finance Committee as fully as regular members. Appointments to the same shall be made by a committee consisting of the Chairman of the Board of Selectmen, the Moderator and the Chairman of the School Committee. Appointments shall be made for a period of three years and shall be so made that not more than two members shall have their terms expire in any one year. In case of vacancy, a member shall be appointed to fill the unexpired term.

§ 7-2. Review of warrant articles; use of Reserve Fund.

The Finance Committee shall consider all articles in the warrant ~~previously~~previous to any Town Meeting regularly called and shall file a report of its recommendations with the Selectmen at least seven days before each meeting. No amount shall be transferred from the Reserve Fund to any appropriation, which shall require additional funds to complete the fiscal year unless approved by the Finance Committee.

ARTICLE II

Council on Aging

[Adopted 5-13-2013 ATM by Art. 29 (Art. XXII of the Bylaws)]

§ 7-3. Name; receipt and use of gifts.

The name of the organization shall be the "Council on Aging," hereinafter referred to as the "Council." Said Council may receive gifts to be managed and controlled by the Council for the purposes of this bylaw as established by Article 37 of the 1970 March Annual Town Meeting and amended by Article 28, April 27, 1987, of the Town of Marion, Massachusetts.

§ 7-4. Purpose.

The basic purposes of the Council are:

- A. To identify the total needs of the population of the ~~community~~aging and to advise the Board of Selectmen of the same.
- B. To educate the community about the needs of the aging and enlist support and participation of all citizens about these needs.

- C. To design, promote, or implement services to fill these needs, or to coordinate existing services.

§ 7-5. Offices.

The principal office of the Council shall be located at the Town House, 2 Spring Street in the Town of Marion, Massachusetts, to which office all mail shall be delivered unless otherwise designated by a majority vote of the Council. The Council may also maintain offices at such other places as a majority of its members may from time to time determine.

§ 7-6. Membership.

The Council shall consist of no fewer than nine members, inclusive of the Chairperson. On an annual basis, the Council members will submit a list of potential Council members to the Marion Board of Selectman. No member is to serve on the Council until appointed by the Board of Selectmen of the Town of Marion. All members shall be sworn in by the Town Clerk within seven days of their appointment.

§ 7-7. Chair; member terms of office.

- A. The Chairperson position shall be elected annually. The person serving as Chairperson may not serve more than two consecutive years, unless special circumstances warrant and only if the extension is unanimously approved by the Council members present at the annual meeting.
- B. The terms of the members shall be for one, two and three years and so arranged that the terms of approximately 1/3 of the members shall expire each year, and their successors shall be appointed for a term of three years each. A member may not serve more than two three-year terms, and cannot be nominated as a potential Council member until there is a break from service for at least one year.

§ 7-8. Meetings.

- A. Regular meetings. Regular meetings of the members of the Council shall be held once a month on the third Monday of the month with the following exceptions: When Monday falls on a legal holiday, the meeting scheduled for that day shall be held on the following Monday.
- B. Special meetings. Special meetings of the members of the Council may be called at any time by the Chairperson, through the secretary at the request of a majority of the members and due notice sent to each member of the Council.
- C. Annual meetings. The annual meeting of the members of the Council shall be held during the regular meeting in June for the purpose of electing officers.
- D. Annual meeting notice. Notice of the annual meeting of members, stating the purpose for which the meeting is called, and the time and place where it is to be held, shall be sent by mail by the secretary, not less than 10 days before the meeting, to each member entitled to vote at such meetings.
- E. Quorum. At all meetings, more than 50% of the members of the Council entitled to vote at such meeting shall be sufficient to constitute a quorum for the transaction of any business.
- F. Voting.
- (1) Except as may otherwise be provided in these bylaws, the vote of at least a majority of the members present at a meeting with respect to a question or matter brought before such meeting shall be necessary and sufficient to decide such question or matter.
 - (2) Each member entitled to vote shall vote only in person.

- (3) All voting rights shall be vested in the members, and each individual member shall be entitled to one vote with respect to any question or matter which may come before a meeting of the members of the Council.

G. Meetings.

- (1) All meetings shall be conducted in accordance with Robert's Rules of Order.
- (2) Anyone wishing to speak shall do so only upon recognition by the Chairperson.

H. Resignation. In the event that a member wishes to resign from the Council, he/she must notify the Council on Aging, the Board of Selectmen and the Town Clerk in writing.

I. Resignation—; attendance. Regular attendance is expected of all members. In the event of absence by any member for three consecutive meetings, except for reasons of health or extenuating circumstances, as duly reported to the Chairperson in advance of Council meetings, the Council shall request resignation of that member through the Board of Selectmen.

§ 7-9. Officers.

A. Number, qualification, election and term of office.

- (1) The officers of the Council shall consist of a Chairperson, a Secretary and a Treasurer and may also include such number of Assistant Secretaries and an Assistant Treasurer as the Council may from time to time deem advisable.
- (2) Officers of the Council shall be elected at the annual meeting of the Council by majority vote of the members present and shall take office upon election.
- (3) Election of officers to fill vacancies created by death, resignation or other cause may take place at any regular or special meeting and shall be for the period of unexpired term of the previous incumbent, except that the office of Chairperson, if vacated, shall be filled by the Treasurer for the unexpired portion of the Chairperson's normal term of office.

B. Chairperson. The Chairperson shall be the chief executive officer of the Council and subject to the direction of the members of the Council and shall have general charge of the business, affairs and property of the Council in its general operations. The Chairperson shall preside at all meetings of the members, shall appoint all committees and shall be an ex-officio member of all committees, serve as the initial spokesman in representing the Council on financial matters at meetings of above Town officials and at Town Meetings.

C. Treasurer. The Treasurer shall; be responsible for reviewing financial statements, submit periodic financial statements to the Council and ~~insure~~ensure that expenditures do not exceed appropriation limitations.

§ 7-10. Bylaw amendments.

The Council shall review the bylaws on an annual basis and should any amendments be requested, the same shall be submitted to the Marion Board of Selectmen for the Selectmen's review. The proposed amendments or alterations of the bylaws shall be approved by the affirmative vote of 2/3 of the members of the Council before being submitted to the Marion Board of Selectmen

§ 7-11. Affiliate memberships.

- A. The Council shall set up an affiliate membership of eight to 10 members who, when attending meetings, shall not be entitled to voting privileges. Affiliate members shall be selected upon approval of a majority of Council members as provided for in § 7-8F.
- B. Some of these members may come from other Town committees whose activities relate to those of the Council on Aging. Others may be selected from groups concerned with the welfare of the elderly in Marion.

ARTICLE III
Open Space Acquisition Commission
[Adopted as Art. XXVII of the Bylaws]

§ 7-12. Establishment; membership and terms.

There shall be an Open Space Acquisition Commission consisting of five members. At the initial election of Commission members, one candidate shall be elected for a term of one year, two shall be elected for terms of two years, two shall be elected for terms of three years, and all subsequent terms shall be for periods of three years.

§ 7-13. Powers and duties.

The Commission shall have the powers of a Conservation Commission with respect to the acquisition of interests in land and the expenditure of funds under the provisions of MGL c. 40, § 8C. The Commission shall also have the power to hire staff and professional services to perform its duties.

§ 7-14. Finances.

The Commission shall meet its financial obligations by:

- A. ~~Drawing upon an open space fund that is funded by a property tax surcharge, (2) Applying for funding, as appropriate, from the Community Preservation Committee;~~
- B. Appropriations voted at Town Meeting; and
- C. Gifts made to the fund in cash or other negotiable securities.

ARTICLE IV
Community Preservation Committee
[Adopted 4-26-2005 ATM by Art. 21 (Art. XXIX of the Bylaws)]

§ 7-15. Establishment; membership; term; removal. [Amended 5-21-2012 ATM by Art. 26]

- A. There is hereby established a Community Preservation Committee of seven voting members pursuant to the provisions of MGL c. 44B, § 5. The composition of the Committee, the appointing authority and the terms of office for the Committee members shall be as follows:
 - (1) One member of the Conservation Commission, as designated by the Commission;
 - (2) One member of the Historical Commission established pursuant to MGL c. 40, § 8D, as designated by the Commission;
 - (3) One member of the Planning Board, as designated by the Board;
 - (4) One member of the Parks Committee, as designated by the Committee;

- (5) One member of the Affordable Housing Committee, as designated by the Committee;
 - (6) One member of the Open Space Acquisition Commission, as designated by the Commission; and
 - (7) One member of the Board of Selectmen.
- B. Each member of the Community Preservation Committee shall serve for a term of one year or until the person no longer serves on the designating commission, board, or committee, whichever is earlier.
- C. Should any of the commissions, boards, authorities or committees which have appointing authority under this bylaw be no longer in existence for whatever reason, the Board of Selectmen shall appoint a suitable person to serve in ~~their~~the place of said body's representative.
- D. Any member of the Community Preservation Committee may be removed for cause by ~~their~~his/her respective designating authority, after a hearing.

§ 7-16. Duties.

- A. The Community Preservation Committee shall study the needs, possibilities and resources of the Town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Open Space Acquisition Commission, the Parks Committee, and the Housing Committee, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the Committee shall hold one annual public informational hearing or more, at its discretion, on the needs, possibilities and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.
- B. The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.
- C. The Community Preservation Committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation, but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.
- D. In every fiscal year, the Community Preservation Committee must recommend either that the legislative body spend or set aside for later spending not less than 10% of the annual revenues of the Community Preservation Fund for:
- (1) Open space (not including land for recreational use);
 - (2) Historic resources; and
 - (3) Community housing.

§ 7-17. Requirements for quorum and cost estimates.

The Community Preservation Committee shall comply with the provisions of the Open Meeting Law, MGL c. ~~39, s. 23B~~30A, §§ 18 through 25. The Committee shall not meet or conduct business without the presence of a majority of the members of the Community Preservation Committee. The Community Preservation Committee shall approve its actions by majority vote of the full Committee. Recommendations to the Town Meeting shall include the ~~Committee's~~ anticipated costs of the recommendations.

§ 7-18. Amendments.

This bylaw may be amended from time to time by a majority vote of the Town Meeting consistent with the provisions of MGL c. 44B.

§ 7-19. Severability.

In case any section, paragraph or part of this bylaw is for any reason declared invalid or unconstitutional by any court, every other section, paragraph or part shall continue in full force and effect.

§ 7-20. When effective.

Provided that this bylaw is approved by the Attorney General, this bylaw shall take effect upon acceptance of the Community Preservation Act at the 2005 Annual Town Election, and after all requirements of MGL c. 40, § 32 have been met. Each appointing authority shall have 30 days after acceptance at the 2005 Annual Town Election to make ~~their~~its initial appointments.

Chapter 33

LEGAL AFFAIRS

[HISTORY: Adopted by the Town Meeting of the Town of Marion as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Town Counsel Dual Representation

[Adopted 11-3-2003 STM by Art. S17 (Art. III, Sec. 5, of the Bylaws)]

§ 33-1. Purpose.

The purpose of this bylaw is to allow the Town to retain counsel who may also represent other towns in the formation and operation of a district of which the Town is or may be a member, without violating MGL c. 268A, § 17(a) and (c). Such dual representation allows the Town to pool resources for a common purpose and preserve scarce Town funds.

§ 33-2. Scope of duties.

Pursuant to this bylaw, the official duties of the Town Counsel include representing the current ~~or~~ prospective member towns in the formation and operation of a district of which the Town is or may be a member, provided that the interests of the Town would be advanced by such dual representation and would not cause a violation of rules governing attorney conduct. Town Counsel shall discharge such duties only when requested to do so by the Board of Selectmen, ~~where~~which shall determine whether the dual representation advances the interest of the Town and conforms to law.

Chapter 45

OFFICERS AND EMPLOYEES

[HISTORY: Adopted by the Town Meeting of the Town of Marion as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Town Clerk

[Adopted as Art. III, Sec. 1, of the Bylaws]

§ 45-1. Notification of committees and committee members.

It shall be the duty of the Town Clerk to immediately after every Town Meeting, notify in writing all members of committees who may be elected or appointed at such meeting, stating the business upon which they are to act and the names of the persons composing the committees, and also to notify all officers, boards, and committees of all votes passed at such meeting in any way affecting them.

ARTICLE II

Terms and Conditions of Employment

[Adopted as Art. III, Sec. 4, of the Bylaws]

§ 45-2. Changes.

The terms and conditions of employment of ~~non-union~~nonunion employees of the Town shall be established, and may from time to time be changed, by the Board of Selectmen as that Board deems fair and equitable, and as otherwise subject to applicable law, but no such employee shall be paid salary and compensation in excess of the amount so appropriated by Town Meeting.

ARTICLE III

Wiring Inspector

[Adopted as Art. VI of the Bylaws]

§ 45-3. Appointment; term.

The Selectmen shall appoint a Wiring Inspector and an Alternate Wiring Inspector each year in March, their terms to expire the following ~~March 31~~June 30.

§ 45-4. Powers and duties.

The Inspector of Wires, with the approval of the Selectmen, shall make rules and regulations, subject to the requirements of the General Laws, covering the installation of electric wires within the Town of Marion, and they shall be filed with the Town Clerk.

§ 45-5. Notification of electrical work to be performed.

Whoever ~~proposed~~proposes to install wires, conduits, apparatus, fixtures, or other appliances for carrying or using electricity for heat, light, or power purposes, within any building or connected to any building, shall notify the Inspector of Wires in writing before proceeding with the work.

ARTICLE IV
Inspector of Gas Piping and Appliances
[Adopted as Art. XIII of the Bylaws]

§ 45-6. Appointment.

The Board of Selectmen shall during each year appoint one or more Inspectors of Gas Piping and Gas Appliances who shall serve at the pleasure of said Board.

§ 45-7. Qualifications.

The Inspectors of Gas Piping and Gas Appliances shall be master plumbers as defined by the provisions of MGL c. 142, § 1.

§ 45-8. Enforcement duties.

It shall be the duty of the Inspector of Gas Piping and Gas Appliances to enforce the provisions of the Massachusetts Code for Installation of Gas Appliances and ~~gas piping, as are or hereafter shall be master plumbers as defined by the provisions under Chapter 737 of the Acts of 1960 or any rules and regulations issued under the authority of said Act~~Gas Piping.

§ 45-9. Fee.

There shall be a fee charged for each inspection made by ~~the~~ said inspectors, the amount of which fee shall be determined by the Board of Selectmen.

Chapter 52

RECORDS AND REPORTS

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. IV of the Bylaws; amended 4-26-1994 ATM by Art. 23. Subsequent amendments noted where applicable.]

§ 52-1. Fiscal year; annual report.

The fiscal year shall begin on July 1 and close on the 30th day of June. An annual report of all officers, boards and committees having charge of the expenditure of money, referring, however, to the report of the Town Accountant for statements in detail of receipts and expenditures, shall be submitted to the Selectmen, who shall cause a copy thereof to be printed and made available in the Town House at least five days before the Annual Town Meeting.

Chapter 64

TOWN MEETINGS

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. II of the Bylaws. Amendments noted where applicable.]

§ 64-1. Annual meeting. [Amended 4-25-2005 ATM by Art. 19; 11-26-2012 STM by Art. S3]

The Annual Town Meeting shall be held on the second Monday in May.

§ 64-2. Election of officers; ballot questions. [Amended 5-21-2007 ATM by Art. 19]

The election of officers designated on the official ballot and the voting upon such questions or matters as may be properly submitted for vote on the official ballot, shall take place on the Friday following the Monday commencement of the Annual Town Meeting each year.

§ 64-3. Notice.

- A. All warrants of Town Meeting shall be served by posting up an attested copy thereof in not less than three public places in the Town, 14 days, at least, before the time of holding the Annual or any Special Town Meeting.
- B. A copy of the warrant shall be sent to all voters at least five days before the time of holding any Special Town Meeting.

§ 64-4. Quorum.

The number of voters necessary to constitute a quorum at any Town meeting shall be 50; provided, however, that a number of less than a quorum may from time to time adjourn the same. This section shall not apply to such parts of meetings as are devoted exclusively to the election of officers by ballot.

§ 64-5. Availability of warrant and Finance Committee report.

Copies of the warrant and of the report of the Finance Committee thereon shall be available to the voters at all Town meetings.

§ 64-6. Regulation of admission.

- A. The Moderator shall appoint such tellers and such clerks as he may require for his assistance, and the Moderator may designate a section of floor space at each Town Meeting where he shall allow only registered voters to enter, the voting list being used.
- B. In counting the number of votes cast, the tellers shall count only the voters of persons in the space designated for voters, if such space is designated as aforesaid.

§ 64-7. Order of action on articles. [Amended 4-17-1953 STM by Art. 1]

Articles of the warrant shall be acted upon in the order in which they appear in the warrant unless otherwise determined by a vote of the meeting, except that no article to appropriate a sum in excess of \$1,000 shall be introduced after 10:00 p.m.

§ 64-8. Motions in writing.

All motions having to do with the expenditure of money shall be presented in writing. Other motions shall be in writing, if so directed by the Moderator.

§ 64-9. Priority of motions.

When a question is before the meeting, the following motions, namely: to adjourn, to lay on the table, for the previous question, to postpone to a certain time, to recommit, or refer, to amend, to postpone indefinitely, shall be received and shall have precedence in the foregoing order, and the first three shall be decided without debate.

§ 64-10. Two-thirds votes. [Amended 4-28-1997 ATM by Art. 3]

On matters requiring a two-thirds vote by statute, a count need not be taken unless the vote so declared by the Moderator is immediately questioned by seven or more voters, as provided in MGL c. 39, § 15.

§ 64-11. Suitable facilities. [Amended 4-28-1997 ATM by Art. 3]

The warrant for an Annual or Special Town Meeting may specify that the meeting is to be held in a suitable auditorium or other facility in any of the contiguous towns. Town Meeting may also vote to adjourn to such a facility if it deems appropriate, as provided in Section 1 of Chapter 448 of the Acts of 1996.

Chapter 105

ALCOHOLIC BEVERAGES

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. XX of the Bylaws. Amendments noted where applicable.]

§ 105-1. Public consumption by minors prohibited.

It shall be unlawful for any minor to consume any alcoholic beverages on any public way, or in any way to which the public has a right of access as invitees or licensees, or in public places within the Town of Marion.

§ 105-2. Violations and penalties.

Whosoever violates the provisions of this bylaw shall be subject to a fine not exceeding \$50.

Chapter 109

ANIMAL CONTROL

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. XXVI of the Bylaws. Amendments noted where applicable.]

ARTICLE I Dog Control

§ 109-1. Definitions. [Amended 4-28-2003 ATM by Art. 19]

As used in this bylaw, the following terms ~~mean~~shall have the meanings indicated:

ANIMAL CONTROL OFFICER — The person or persons employed by the Town as the enforcement officer.

COMMERCIAL KENNEL — A single premises, with a collection of 11 or more dogs, three months or older, that are maintained for any purpose, or where four or more litters per year are raised, or where the boarding or grooming of dogs is performed as a business.

DOG POUND — Any premises designated by action of the Town for the purpose of impounding dogs and caring for all dogs found running at large in violation of this ~~ordinance~~bylaw.

FERCE, VICIOUS OR DANGEROUS DOG — A dog that either:

A. Without justification, attacks a person or domestic animal, causing physical injury or death; or

B. Behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

HOBBY KENNEL — A single premises with a collection of six to 10 dogs, three months or older, that are maintained for any purpose, and where fewer than four litters per year are raised.

KENNEL — A single premises with a collection of four or five dogs, three months or older, that are maintained for breeding, boarding, sale, training, hunting, or any other purpose.

LICENSE PERIOD — The time between July 1 through June 30, both dates inclusive.

OWNER — Any person, group of persons or corporation ~~owing~~owning or keeping or harboring a dog or dogs.

RESTRAINT — A dog is under restraint within the meaning of this ~~ordinance~~bylaw if ~~he~~it is under the control and beside a competent person and obedient to that person's command or within the property limits of its owner or keeper.

§ 109-2. Enforcement.

The Animal Control Officer or Animal Control Officers shall enforce the provisions of this bylaw.

§ 109-3. Restraint required.

The owner shall keep his dog under restraint at all times.

§ 109-4. Impoundment fees.

Any dog impounded hereunder may be reclaimed as herein provided upon payment by the owner to the Animal Control Officer of the sum of \$100 for each day such dog is kept.

§ 109-5. Confinement of certain dogs.

- A. The owner shall confine within a building or secure enclosure every fierce, dangerous or vicious dog and not take such dog out of such building or secure enclosure unless such dog is securely muzzled and upon a leash. The Animal Control Officer may destroy any such dog which is found not to be so confined and without such a muzzle.
- B. The owner shall confine within a building or secure enclosure any dog that has been impounded more than twice by the Animal Control Officer and not take such dog out of such building or secure enclosure unless such a dog is well secured by a leash. Failure to do so may result in such dog being taken permanently.

§ 109-6. Beaches. [Added 4-27-1998 ATM by Art. 26; amended 5-18-2009 ATM by Art. 24]

It shall be unlawful for any person to permit any dog owned by him and/or under his care or control to be present on any beach owned by the Town of Marion from May 1 through October 1. From October 2 through April 30, dogs may be present on any beach owned by the Town of Marion, provided ~~it is~~ they are under the control of ~~its~~ their owner. It is the owner's responsibility to provide a "pooper scooper" or some other device capable of removing dog waste from the beach property. Failure of the owner to remove dog waste shall be subject to the penalties described in § 109-7.

§ 109-7. Violations and penalties.

Penalties for the violation of any provision of this bylaw shall be assessed and collected in accordance with the procedure established under MGL c. 140, § 173A (noncriminal disposition of complaints for violation of dog control laws); provided, however, that the fine for each violation, including the first offense, shall be the sum of \$25.

ARTICLE II

Licensing

[Added 4-28-2003 ATM by Art. 19]

§ 109-8. License required; tags; fees.

- A. The owner or keeper of a dog in the Town of Marion is subject to these regulations when the dog reaches the age of three months. This section shall not apply to a person having a kennel license.
- B. There shall be a fee that is paid by the owner for each license and tag and any replacement tag issued by the Town Clerk. All fees under this section shall be determined by the Board of Selectmen, and may be changed from time to time as ~~they deem~~ it deems appropriate. No fee shall be charged for a license for a dog owned by a person aged 70 years or over. [Amended 5-19-2008 ATM by Art. 21]
- C. The Town Clerk shall record each license issued, the name of the owner or keeper of each dog so licensed, and the name, registered number and description of each dog. The owner or keeper of any dog so licensed shall state upon the license form, the breed, color, weight and special markings of the dog. Such books shall be open to the public for inspection during the usual office hours of the Town Clerk.

- D. The owner or keeper shall cause said dog to wear around its neck or body a collar or harness to which the tag shall be securely attached. In the event that any tag is lost, defaced, or destroyed, the owner or keeper shall obtain substitute tags from the Town Clerk.
- ~~E. A license duly recorded in another jurisdiction shall be valid in the Town of Marion until the expiration of the licensing year, at which time the owner or keeper shall cause the dog to be licensed in the jurisdiction of residence.~~
- E. The licensing period shall be for one year. The deadline for procurement of a dog license is established as June 30 of each year. License renewal may be applied for within 30 days prior to the expiration date. New residents must apply for a license within 30 days of establishing residence. No fee shall be charged for a dog specially trained to lead or serve a blind or deaf person upon presentation to the Town Clerk of a certificate of such training.
- F. A license fee shall not be refunded because of a subsequent death, loss, spaying or neutering, or removal from the Town of such dog, nor because a license fee has been mistakenly paid to the Town.
- G. The provisions of this section shall not apply to institutions licensed under MGL c. 140, § 174D, to shops licensed under MGL c. 129, § 39A, to any person operating a license~~licensed~~ kennel or where otherwise provided; by law.

§ 109-9. Kennel licenses.

- A. Any owner ~~of~~or keeper of a kennel, hobby kennel, or commercial kennel shall obtain a kennel license; provided, however, that before the Town Clerk issues such license, the owner or keeper provides the Town Clerk with the written approval of the Board of Appeals or special permitting authority or the written determination by the Building Commissioner that such approval is not required. The kennel license shall be issued by the Town Clerk and there shall be a fee for such kennel license, to be paid by the owner. All fees under this section shall be determined by the Board of Selectmen, and may be changed from time to time as ~~they deem it deems~~ appropriate.
- B. A kennel license shall be in lieu of any other license required for a dog, for the period of time the dog is kept in such kennel. The owner or keeper of such kennel shall renew the license prior to the commencement of each succeeding license period.
- C. While at large, each dog in a kennel shall wear a collar or harness with a tag securely attached. The tag shall have the number of the kennel license, the name of the town that issued the kennel license, and the year that the license was issued. Such tag shall be in the form prescribed and furnished by the Town Clerk and shall be issued by the Town Clerk.
- D. If a kennel owner desires to increase the capacity of his/her kennel during a license period, he/she shall apply to the Town Clerk, and, if required by the Zoning Bylaw, present the Town Clerk with the written approval of the Board of Appeals or special permitting authority prior to the issuance of such license modification. The Town Clerk shall issue such modification upon payment by the owner of the difference between his existing kennel license and the fee for the kennel license most recently approved.
- E. The Town Clerk shall issue, without charge, upon written application and written approval of the Board of Appeals, a kennel license to any domestic charitable corporation, incorporated in the commonwealth, exclusively for the purpose of protecting animals from cruelty, neglect, or abuse or for the relief of suffering.
- F. A veterinary shall not be considered a kennel unless it contains an area for the grooming or selling of dogs, or for the boarding of dogs for other than medical or surgical purposes. If it is considered a

kennel, the owner or keeper shall, before the Town Clerk issues such license, provide the Town Clerk with the written approval of the Board of Appeals or special permitting authority or the written determination by the Building Commissioner that such approval is not required.

- G. All holders of kennel licenses shall notify the Town Clerk, in writing, of the sale of any dog or puppy, which includes the description of the animal, the age, color, breed, identifying marks, sex, and whether the dog has been spayed or neutered. The kennel owner shall forward a copy of such notice to the Clerk of the city or town in which the new owner of the dog resides.

§ 109-10. Issuance and revocation of licenses; kennel inspections; complaints.

- A. The Town Clerk, upon receiving a written directive from the Selectmen that was based on information obtained from the Animal Control Officer or the Chief of Police or his/her designee, may revoke any license. In such case of suspension of said license, the Board of Selectmen may reinstate such kennel license and impose conditions and regulations upon the operation of the kennel.
- B. If an applicant is shown to have withheld or falsified any material information on the application, the Town Clerk may refuse to issue or may revoke a license.
- C. The Animal Control Officer or the Chief of Police of the Town of Marion or other persons authorized under the General Laws may at any time inspect or cause to be inspected any kennel, and if, in his or her judgment, the same is not being maintained in a sanitary and humane manner, or if records are not properly kept as required by law, the Board of Selectmen shall by order revoke or suspend such license. In the case of suspension, the Board of Selectmen may reinstate such license and impose conditions and regulations upon the operation of said kennel.
- D. Upon the petition of six citizens filed with the Board of Selectmen setting forth they are aggrieved or annoyed to an unreasonable extent by one or more dogs at a kennel located in Town, because of excessive barking or vicious disposition of such dogs or other conditions connected with the kennel that constitute a public nuisance, the Board of Selectmen shall, within seven days of filing such petition, give notice to all parties concerned of a public hearing to be held within 14 days after the date of such notice. ~~Within~~The Board of Selectmen shall, within seven days after the public hearing, investigate or cause to be investigated the ~~Board's~~subject matter of ~~Selectmen's~~the petition and shall ~~make an, by order, either revoking~~make an, by order, either ~~suspend or suspending such~~revoke the kennel license ~~or, otherwise regulating~~regulate the ~~operation of said~~ kennel, or ~~shall~~dismiss such the petition. Written notice of any order under this section revoking, suspending or reinstating a license shall be mailed forthwith to the office issuing such license and to the holder of the license.
- E. Any person maintaining a kennel after the license has been so revoked, or while such license is so suspended, shall be charged a fee of \$50 (MGL c. 140, § 137C).

§ 109-11. Violations and penalties. [Added 4-27-1999 ATM by Art. 25]

- A. Whoever violates any provision of § 109-8 or 109-9 of these rules and regulations shall be punished by a fine of not less than \$25, which shall be paid to the Town.
- B. If any person refuses to answer, or answers falsely, questions of a police officer or an Animal Control Officer, pertaining to ~~their~~his/her ownership of a dog, ~~they~~he/she shall be punished by a fine of not less than \$25, which shall be paid to the Town.
- C. If the dog as to which any violation occurs was unlicensed at the time of such violation, a fine of not less than \$25 nor more than \$50 shall be paid by the owner to the Town, and the owner or keeper of such dog will be required to immediately procure all delinquent licenses and tags, as well as the current license and tag.

Chapter 114

BEACHES

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. V of the Bylaws; amended 4-27-1998 ATM by Art. 26. Subsequent amendments noted where applicable.]

§ 114-1. Indecent exposure.

No person shall expose himself or herself without a bathing suit on any beach or in any pond, stream or waters, to the view of the spectators from any street, public grounds, dwelling house, railroad, boat, steamboat or vessel; and no person shall appear in any public place, except a bathing beach, in a bathing suit, unless covered by a wrap concealing the bathing suit.

§ 114-2. Use of vehicles to disrobe.

No person shall robe or disrobe in a vehicle of any description on any street of the Town, and no person shall obstruct the view of the interior of any vehicle, except a trailer, by curtains, paper, paint or cloth of any kind, while on any street or property of the Town.

§ 114-3. Overnight use restricted.

No person or persons shall be allowed to sleep, gather, or congregate on any beaches within the Town of Marion between the hours of 10:00 p.m. and 6:00 a.m. This bylaw shall not apply to any person~~;~~ or persons~~;~~ who sleep, gather or congregate on a beach which is not owned by the Town, county or state, with the expressed permission of the owner or person~~;~~ or persons who are lawfully in possession of said beach. Any person violating this bylaw shall be punished by a fine of not more than \$50, and any person who remains on any beaches within the Town of Marion~~;~~ in willful violation of this bylaw or ordinance~~;~~ may be arrested without a warrant.

§ 114-4. Alcoholic beverages.

It shall be unlawful for any person to consume alcoholic beverages on any beach owned by the Town of Marion without having first obtained a liquor license from the Board of Selectmen in accordance with the applicable provisions of ~~the~~ Massachusetts General ~~laws,~~Laws Chapter 138.

§ 114-5. Dogs.

Dogs shall be restricted on Town beaches as set forth in Chapter 109, Animal Control, § 109-6, of the Town Code.

Chapter 118

BOATS AND BOATING

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. XII of the Bylaws; amended 4-28-2003 ATM by Art. 20. Subsequent amendments noted where applicable.]

§ 118-1. Applicability; enforcement by Harbormaster.

- A. This ~~article~~bylaw applies to all persons, vessels, objects or structures, on or using the water of the Town of Marion, including all saltwater harbors.
- B. The Harbormaster is authorized to prescribe regulations to carry out this ~~article~~bylaw.
- C. Before prescribing any regulations under this ~~article~~bylaw, the Harbormaster shall present said regulations to the Marion Resource Commission, ~~where~~which shall hold a public hearing on the proposed regulations.
- D. Failure of the Harbormaster to prescribe regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this ~~article~~bylaw.

§ 118-2. Definitions.

The following words, for the purposes of this ~~article of this Bylaw~~bylaw, shall, unless another meaning is clearly apparent for the way in which the word is used, have the following meanings:

HEADWAY SPEED — The slowest speed at which a personal watercraft may be operated and maintain steerageway. To be considered operating at headway speed under this ~~article~~bylaw, the operator shall be either kneeling or sitting.

PERSONAL WATERCRAFT — A vessel propelled by a water jet pump or other machinery as its primary source of propulsion that is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than being operated in the conventional manner by a person sitting or standing inside the vessel.

SAFETY ZONE — An area established by the Harbormaster during a marine event, emergency, or other situation, restricting access.

VESSEL — Every description of a watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

WATER SKIING — The towing or manipulating of a surfboard or other similar ~~device~~device behind any vessel.

§ 118-3. Speed limit, no-wake and safety zones.

- A. Speed limit and "no wake" areas.
 - (1) In areas posted "No wake," vessels shall not exceed five miles per hour and shall make no wake.
 - (2) Vessels shall make no wake within 150 feet of: bathers, divers, piers, docks, floats, small boats propelled by ~~other~~ means other than machinery, vessels not underway, or the shore.

- (3) The number and location of ~~5 MPH~~five-mile-per-hour and/or "no wake" areas may be changed at the discretion of the Harbormaster, ~~providing~~provided that such action is approved by the Board of Selectmen and that a two-week period for public comment is allowed prior to any change(s).
- B. The following areas are posted "no wake" from April 15 to October 15:
- (1) Marion Inner Harbor (Sippican Harbor), which includes all water north of a line drawn from the United States Coast Guard Green Buoy #7 to the southern tip of Ram Island.
 - (2) Blankenship and Planting Island Coves and adjoining waters, including all waters north and east of a line drawn from the northern tip of Planting Island to the southernmost point of Ram Island.
 - (3) Wing's Cove, from the outer end of Piney Point dock to the southern tip of Clapps Island to the southern tip of Great Hill.
 - (4) Weweantic River, from Bass Point Road due east to the Town boundary.
- C. Safety zone. There shall be no swimming, anchoring, water skiing, use of sailboards or scuba diving or unauthorized marine traffic in a designated safety zone.

§ 118-4. Town floats; tie-up time limits; fueling restrictions.

- A. Without the express permission of the Harbormaster and Assistant Harbormaster, or a wharfinger, no vessel may remain tied up to a Town-owned float for longer than 20 minutes.
- B. Mobile gasoline fueling is not permitted on Town-owned floats or piers.
- C. Mobile commercial diesel fueling may be permitted with the express permission of the Harbormaster, ~~providing~~provided the vendor/vendors hold a current Coast Guard-approved Operations Manual and Response Plan under 33 CFR 154-~~Subpart, Subchapter~~ F, and meet all federal, state, and local requirements as they pertain to fueling of marine vessels. The Harbormaster may require the vendor/vendors to provide a copy of the USCG-approved Operations Manual and Response Plan. In the event of any alterations or revisions to either the Operations Manual or Response Plan, the Harbormaster shall be notified prior to any fueling operations.
- D. Mobile commercial diesel fueling is restricted to the North Wharf of Old Landing, Monday through Friday, 8:00 a.m. to 4:00 p.m.
- E. The vendor/vendors must notify the Harbormaster at least 24 hours prior to any fueling operation.

§ 118-5. Water skiing.

Water skiing is prohibited in the areas posted "no wake," in marked channels, and within 150 feet of bathers, divers, piers, floats, docks, other boats or the shore.

§ 118-6. Canoeing and kayaking.

Any person aboard a canoe or kayak shall wear a Coast-~~Guard~~-approved personal ~~floatation~~flotation device of Type I, II, or III from January 1 to May 15 and September 14 to December 31, except persons aboard vessels excluded by MGL c. 90B, § 5A.

§ 118-7. Operation of personal watercraft.

- A. The purpose and scope of this section is to promote safety by establishing rules of conduct governing the operation of personal watercraft. The Town of Marion intends to improve, through this ~~article~~bylaw, the safe and appropriate use of personal watercraft.
- B. No person shall operate a personal watercraft except in a safe and prudent manner, having due regard for other waterborne traffic, the posted speed and wake restrictions, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person.
- C. No person shall operate a personal watercraft if such person is:
 - (1) Under the age of 16~~;~~ or
 - (2) Sixteen years or 17 years of age without first having received a safety certificate evidencing satisfactory completion of a training course in the safe operation conducted by the United States Power Squadron, the Division of Law Enforcement, or other such entity approved in writing by the Director of the Division of Law Enforcement.
- D. No person shall operate a personal watercraft in a negligent manner. The following, without limitation, constitute negligent operation:
 - (1) Unreasonable jumping or attempting to jump the wake of another vessel;
 - (2) Following within 150 feet of a water skier;
 - (3) Speeding in restricted areas;
 - (4) Weaving through congested vessel traffic;
 - (5) Crossing unreasonably close to another vessel; or
 - (6) Operating a personal watercraft in such a manner that it endangers the life, limb, or property of any person.
- E. Except as otherwise provided in this ~~article~~bylaw, no person shall operate a personal watercraft:
 - (1) Within 150 feet of shore except at headway speed.
 - (2) Within 150 feet of a public bathing area.
 - (3) Between 150 feet and 300 feet of a public bathing area except at headway speed.
 - (4) Within 150 feet of a swimmer in the water.
- F. Every person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch shall attach said lanyard to his person, clothing or personal ~~floatation~~flotation device, as is appropriate for the specific craft.
- G. Any person riding on a personal watercraft shall wear a Coast—Guard-approved personal ~~floatation~~flotation device of Type I, II, or III.

§ 118-8. Sailboards.

- A. The use of sailboards is prohibited in all marked channels~~;~~ and in restricted swimming areas.
- B. If a sailboarder is required to pass a marked channel in order to gain access to another area, he shall do so as nearly as practicable at right angles to the traffic flow in the marked channel.

§ 118-9. Pollution.

The discharge or disposal of petroleum products, dead fish or shellfish, fish frames, garbage, wastewater, rubbish or debris on the water, shores, or beaches is prohibited.

§ 118-10. Abandonment and removal of vessels.

- A. No vessel, mooring, or other object shall be abandoned, sunk, or placed where it may constitute a hazard to navigation.
- B. Any vessel, mooring, or object constituting a hazard to navigation, any vessel or object improperly secured, swamped, sunk, washed ashore, or found in a restricted area may be removed or relocated at the direction of the Harbormaster or Assistant Harbormaster if corrective action is not taken after 72 hours' notice to the owner, or if the owner is unknown, after notice has been posted for the same period at the Town office or on or near such vessel, mooring, or object.
- C. The expense of such removal or relocation and liability incurred ~~therefore~~, therefor shall be the responsibility of the owner.
- D. Nothing in the above subsections shall restrict earlier action by the Harbormaster or an Assistant Harbormaster, with or without notifying the owner, if in their judgment, such action is necessary to protect life, limb, or property.

§ 118-11. Divers and vessel operations near divers.

- A. Unless, for special purposes, permission is granted in writing by the Harbormaster to otherwise protect divers, any person or persons skin diving or scuba diving shall adhere to the following requirements:
 - (1) Display a diver's flag consisting of red field with white diagonal stripe, of a size not less than 12 inches by 15 inches.
 - (2) Display a flag on a vessel or surface float or similar device, which holds the flag upright at a minimum distance of three feet above the surface of the water.
 - (3) Stay within 100 feet of the aforesaid float or vessel, or tow the float and flag with him while he is submerged and surface thereunder.
 - (4) Vessels restricted in their ability to maneuver because divers are attached to the vessel shall, in addition to the above requirements, display the day shape required by the Navigation Rules.
- B. A vessel operating within sight of a diver's flag or the day shape required in the above subsection shall proceed with caution, and within a radius of 100 feet of such flag or day shape, ~~shall~~ proceed at a speed not to exceed three miles per hour.

§ 118-12. Anchoring and mooring.

Unattended vessels shall not anchor in Marion Harbor other than the anchorage designated on the Harbor Anchorage Map, unless otherwise directed by the Harbormaster. Failure to comply with this section will result in the removal of the vessel at the owner's expense.

§ 118-13. Operation and responsibility.

- A. Vessel operators are responsible for their wake at all times, and shall not operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

- B. No person shall operate any vessel in a manner that violates MGL c. 90B, or any regulations adopted thereunder, or any other state or federal law that may apply.
- C. Nothing in these regulations shall exonerate any vessel, or the owner, master, crew thereof, from the consequences of any neglect to comply with this ~~article~~bylaw or the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

§ 118-14. Jurisdiction.

Nothing contained in this ~~article~~bylaw shall be held or constructed to supersede or conflict with or interfere with or limit the jurisdiction of the United States government with respect to the enforcement of the navigation, shipping, anchorage, or other associated federal laws, or with the regulations, or any laws, or regulations of the Commonwealth of Massachusetts.

§ 118-15. Violations and penalties.

- A. Any person or entity who or which violates any section of this Chapter 118 shall be liable to the Town in the amount of \$300, unless a lesser amount is provided for such violation under MGL c. 90B or any regulation adopted ~~there under~~thereunder.
- B. Fines shall be recovered by indictment or on complaint before the District Court or by ~~non-criminal~~noncriminal disposition in accordance with Chapter 1, Article II, § 1-6, of the Town Code and MGL c. 40, § 21D. The Harbormaster or his/her designee shall be the enforcing agent under this ~~chapter~~bylaw.
- C. Each day of noncompliance following the issuance of a warning or citation pursuant to this section shall constitute a separate violation.

Chapter 122

BUILDINGS, NUMBERING OF

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. XVI of the Bylaws. Amendments noted where applicable.]

§ 122-1. Assignment of numbers.

The Selectmen shall assign a number to every dwelling house, store, office, factory, or other building occupied for residential or business purposes on property which abuts or faces on a public or private way within the Town. A building occupied by more than one family or business shall be assigned a number for each entrance facing on said way.

§ 122-2. Specifications and location of numbers.

~~The Selectmen shall send notice to the owner of each building thereof as appearing in the last annual tax list, by mail or by causing such notice to be delivered at each building required to be numbered, of the number or numbers assigned to such building together with a copy of this Bylaw.—~~

- A. Within 30 days of the ~~date that such notice is sent or delivered~~ assignment by the Board of Selectmen, the owner or occupant of any such building shall affix or cause to be affixed to said building, on or near the entrance or entrances of the buildings which face on the way, the number assigned by the Selectmen, the numerals of which shall be clear, legible, and not less than three inches in height.
- B. Structures required to be numbered under this bylaw which are not in plain view of, or are not within 150 feet of, a public or private way within the Town, shall display a duplicate number or numbers at least three inches in height. Said duplicate numbers shall be made of reflective material, shall be displayed within 25 feet of the public or private way, and shall be displayed not less than 48 inches above the public or private way. [Added 5-16-2011 ATM by Art. 30]

§ 122-3. Placement of new numbers. [Amended 5-16-2011 ATM by Art. 30]

In case the numbers on the building, including numbers displayed facing the public or private way as contemplated in § 122-2 above, affixed under this bylaw are defaced or removed, or upon the erection of a new building after the numbering under this bylaw is completed, new numbers shall be placed upon such building and displayed facing the public or private way in the same manner as prescribed in this bylaw.

§ 122-4. Violations and penalties. [Added 3-1-1965 ATM by Art. 28]

Any owner or occupant that fails to comply with any section of this bylaw, or any person who willfully removes, defaces, or changes a number affixed under this bylaw, or affixes a number or numbers other than those assigned to the building by the Selectmen, shall be subject to a fine in accordance with Chapter 1, Article I, § 1-4, of ~~not more than \$20 for each offense, these bylaws.~~ After official notification of an existing violation, each day of ~~non-compliance~~ noncompliance shall constitute a separate offense.

Chapter 131

DISORDERLY CONDUCT

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. XVIII of the Bylaws. Amendments noted where applicable.]

§ 131-1. Prohibited conduct.

No person shall behave in a disorderly manner or use indecent or insulting language, or shout, scream and/or utter loud outcries without reasonable cause, in any public place, or on any sidewalk, street, or other public way of the Town, or near any dwelling house to the annoyance or disturbance of any person there being or passing.

§ 131-2. Violations and penalties.

Any person violating any of the provisions of this bylaw may be arrested without a warrant and shall be punished by a fine ~~of not more than \$50 for each offense~~ in accordance with Chapter 1, Article I, § 1-4, of these bylaws.

Chapter 140

FEES

[HISTORY: Adopted by the Town Meeting of the Town of Marion 4-27-1992 ATM by Art. 18 (Art. III, Sec. 3, of the Bylaws). Amendments noted where applicable.]

§ 140-1. Fees payable to treasury.

All fees received by the Tax Collector and Treasurer by virtue of his or her office shall be paid into the Town treasury.

Chapter 156

JUNK AND SECONDHAND GOODS

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. XI of the Bylaws. Amendments noted where applicable.]

§ 156-1. Authority to license dealers and collectors; fees.

The Selectmen may license suitable persons to be dealers and keepers of shops principally for the purchase, sale, or barter of junk, old metal, or secondhand articles in the Town. They may also license suitable persons as junk collectors to collect by purchase or otherwise junk, old metal, and secondhand articles from place to place in the Town; and they must provide that such collectors shall display badges upon their persons or upon their vehicles or upon both when engaged in collecting, transporting, or dealing in junk, old metal, or secondhand articles and may prescribe the design thereof. They may also provide that such shops and all articles of merchandise therein and any place, vehicle, or receptacle used for the collection or keeping of the articles aforesaid, may be examined at all reasonable hours by the Selectmen or by any person by them authorized thereto. The fee for such license shall be in the discretion of the Selectmen, except that it shall not be less than \$25 nor exceed \$250.

§ 156-2. Operating requirements and restrictions.

Every keeper of a shop principally for the purpose of sale or barter of junk, old metal, or secondhand articles within the limits of the Town shall keep a book in which shall be written at the time of every purchase of any such article a description thereof, the name, age, and residence of the person from whom purchased and the day and hour when such purchase was made; such book shall at all times be open to the inspection of the Selectmen and of any person by them authorized to make such inspection. Every keeper of such shall put in a suitable and conspicuous place in his shop a sign having his name and occupation legibly inscribed thereon in large letters. Such shop and all articles of merchandise therein may be at all times examined by the Selectmen or by any person by them authorized to make such examination; and no keeper of such shop and no junk collector shall directly or indirectly either purchase or receive by way of barter or exchange any of the articles aforesaid of a minor or apprentice, knowing or having reason to believe him to ~~do be~~ such; and no article purchased or received by such shopkeeper shall be sold until at least 30 days from the date of its purchase or receipt have elapsed. No junk collector shall purchase or sell any of the articles aforesaid from 6:00 p.m. to 7:00 a.m.

§ 156-3. Planning Board review; public hearing.

In no case shall a license be granted until:

- A. ~~Plan~~A plan of the location has been submitted to the Planning Board for ~~their~~its review, said plan to be submitted 14 days before the first action by the Selectmen.
- B. ~~Public~~A public hearing has been held, said hearing to be given 10 days' prior notice and all abutters and the Planning Board ~~has~~having been duly notified.

§ 156-4. Violations and penalties.

Whoever violates any of the foregoing bylaws shall, unless other provision is expressly made, be liable to a penalty ~~enof~~ not more than \$20 for each offense.

§ 156-5. Enforcement.

It shall be the duty of the Selectmen and the police officers of the Town to promptly prosecute for all violations of the foregoing bylaw.

Chapter 163

LICENSES AND PERMITS

[HISTORY: Adopted by the Town Meeting of the Town of Marion as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Denial or Revocation for Nonpayment of Taxes

[Adopted 5-19-2008 ATM by Art. 23 (Art. I, Sec. 5, of the Bylaws)]

§ 163-1. List of delinquent taxpayers.

The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the "Tax Collector," shall annually, and may periodically, furnish to each department, board, commission or division, hereinafter referred to as the "licensing authority," that issues licenses or permits, including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the "party," that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges ~~for not less than a twelve-month period~~, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

§ 163-2. Revocation or suspension of license.

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the Tax Collector or with respect to any activity, event or matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the Tax Collector; provided, however, that written notice is given to the party and the Tax Collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than 14 days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be issued or renewed until the licensing authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as of the date of issuance of said certificate.

§ 163-3. Payment agreements.

Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitation to the license or permit and that the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder ~~be~~is given notice and a hearing as required by applicable provisions of law.

§ 163-4. Waiver.

The Board of Selectmen may waive such denial, suspension or revocation if it finds there is ~~not~~no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in ~~Section I of Chapter~~MGL c. 268A, § 1, in the business or activity conducted in or on said property.

§ 163-5. Exceptions.

This ~~section~~bylaw shall not apply to the following licenses and permits: open burning (MGL c. 48, § 13); ~~bicycle permits (Section 11A of Chapter 85)~~; sales of articles for charitable purposes (MGL c. 101, § 33); children work permits (MGL c. 149, § 69); clubs, associations dispensing food or beverage licenses (MGL c. 140, § 21E); fishing, hunting, trapping licenses (MGL c. 131, § 12); marriage licenses (MGL c. 207, § 28); and theatrical events, public exhibition permits (MGL c. 140, § 181).

Chapter 167

LOITERING

[**HISTORY:** Adopted by the Town Meeting of the Town of Marion as Art. XIX of the Bylaws. Amendments noted where applicable.]

§ 167-1. Prohibited conduct.

No person, except the owner or occupant, shall stand or remain in any doorway or upon any stairs, doorsteps, portico or other projection from any house or building, or upon any wall or fence on or near any street or public way or public place, after having been requested by the owner or any occupant of the premises or by any constable, watchman employed by the Town, or public officer to remove therefrom.

§ 167-2. Violations and penalties.

Any person violating any of the provision of this bylaw may be arrested without a warrant, and shall be punished by a fine ~~of not more than \$50 for each offense~~ in accordance with Chapter 1, Article I, § 1-4, of these bylaws.

Chapter 180

PEDDLING AND SOLICITING

[HISTORY: Adopted by the Town Meeting of the Town of Marion as 10-28-2013 STM by Art. S8 (Art. XXI of the bylaws). Amendments noted where applicable.]

§ 180-1. Intent; statutory provisions.

This bylaw and its regulations govern for-profit transient vendors/businesses, hawkers and peddlers, and door-to-door solicitations pursuant to the authority granted the Town of Marion. These regulations are intended to supplement, and not to replace or override, the Massachusetts General Law governing the foregoing activities, all as set forth in MGL c. 101, §§ 1 through 34.

§ 180-2. Definitions.

The following terms shall have the meanings set forth in MGL c. 101, § 1 et seq., and are summarized for the purposes of these regulations as follows:

HAWKER AND PEDDLER — Any person who goes from place to place within the Town selling goods, whether on foot or in a vehicle, for profit, is a hawker or peddler ~~—(these. (These~~ two terms are interchangeable.)

PERSON — For purposes of these regulations, the persons being regulated herein are those persons over the age of 16 who are engaging in the activities regulated herein for or on behalf of for-profit organizations.

TRANSIENT VENDOR; TRANSIENT BUSINESS — A transient vendor is a person who conducts a transient business ~~off~~for profit. A transient business (also called a temporary business) is any exhibition and sale of goods, wares or merchandise which is carried on in any structure (such as a building, tent, or booth) unless such place is open for business during usual business hours for a period of at least 12 consecutive months.

§ 180-3. Purpose.

The purpose of these regulations is to ensure public safety by requiring persons conducting the foregoing activities, which historically have a high potential for fraud and abuse, to be licensed, either at the state level or local level, so that the Town's citizenry will know who is conducting these activities and that, to the degree set forth herein or in the applicable Massachusetts General Laws, they have identified themselves to the proper authorities, are bonded if required, and satisfy the minimum criteria.

§ 180-4. Scope.

These regulations shall apply to all persons conducting the foregoing activities within the Town of Marion.

§ 180-5. Registration required; display of permit or license; fee; restrictions on activities.

Each person engaging in the foregoing activity shall be subject to, responsible for, and fully in compliance at all times with the following requirements:

A. Registration requirements.

- (1) Persons not registered (licensed) by the commonwealth shall make application for a Marion permit to the Chief of Police, on a form containing the following information or on a form as prepared by the Marion Police Department: the applicant's name, signature, home address, the name and address of the owner or parties in whose interest the business is to be conducted, their business address and phone number, cellular telephone numbers for the applicant and business; a brief description of the business to be conducted within the Town; the applicant's social security number; the description and registration of any motor vehicles used by the applicant; and whether the applicant has ever been charged with a felony. The application shall be made under oath. The applicant shall be photographed for ~~purpose~~purposes of identification.
 - (2) The Chief of Police shall approve the application and issue a permit within 48 hours, excluding Saturday, Sunday, and legal holidays, of its filing unless he determines either that the application is incomplete, or that the applicant is a convicted felon, or is a fugitive from justice. The registration card shall be in the form of an identification card, containing the name, signature and photograph of the licensee. Such card shall be ~~non-transferable~~nontransferable and valid only for the person identified therein and for the purpose as shown on the license. The card shall be valid for a period of one year from the date of issuance. Any such registration card shall be void upon its surrender or revocation, or upon the filing of a report of loss or theft with the Marion Police Department. The Chief of Police may revoke such registration card for good cause.
 - (3) Persons registered (licensed) by the commonwealth shall not be subject to the foregoing ~~paragraph~~subsection, but are required to make themselves known to the Marion Police Department by filing a copy of the state license with the Department.
- B. Permit or license to be visibly displayed. Such state or local permit or license shall be displayed at all times while the business activity is being conducted, and shall be provided to any police officer upon request. The license shall also be affixed conspicuously on the outer garment of the licensee whenever he or she shall be engaged in the activity, except in the case of a transient business, when the license shall be displayed visibly within the structure where such business is being conducted. Such permit or license, if issued locally, shall be the property of the Town of Marion and shall be surrendered to the Chief of Police upon its expiration.
- C. Permit fee. The filing of a copy of a state license as required shall not be subject to a fee. The fee for a local permit shall be determined by the Board of Selectmen after consultation with the Chief of Police.
- D. Restrictions on activity.
- (1) No solicitations shall be made after 5:00 p.m. or before 8:00 a.m.
 - (2) No solicitations shall be made on official federal, state or Town holidays or Sundays.
 - (3) No person may use any plan, scheme or ruse, or make any false statement of fact, regarding the true status or mission of the person making the solicitation.
 - (4) For good cause, the Chief of Police may further regulate the hours and conditions under which the licensee may engage in door-to-door selling.

§ 180-6. Violations and penalties.

- A. Any and all violations of these regulations may be enforced by any police officer, either by initiating criminal proceedings, or through the ~~non-criminal~~noncriminal disposition procedure set forth in Chapter 1, Article II, § 1-7, of the Town of Marion's General Bylaws.

B. Any person violating any one or more of these regulations shall be subject to the following fines:

- (1) ~~One hundred fifty dollars for~~For the first offense: \$150.
- (2) ~~Three hundred dollars for~~For each subsequent offense: \$300, with each such subsequent offense constituting a separate offense.

Chapter 192

SOIL REMOVAL

[HISTORY: Adopted by the Town Meeting of the Town of Marion as Art. VIII of the Bylaws. Amendments noted where applicable.]

§ 192-1. Permit required; public hearing.

No person shall remove nor cause to be removed any soil, loam, sand, or gravel for commercial purposes from any land in the Town, not in public use, unless such removal is authorized by a permit issued by the Selectmen, except in conjunction with and for the purpose of construction of a building on a parcel and except for the continued operation on the same parcel of any existing sand or gravel or clay pit. No such permit shall be issued until the application ~~therefore~~therefor is filed with said Board. Said Board shall hold a public hearing on the application, and the date and time of the public hearing thereon shall be advertised in a local newspaper at least seven days ~~at least~~ before the public hearing.

§ 192-2. Violations and penalties.

Whoever violates any of the provisions of this bylaw shall, for the first offense, pay a fine of \$50~~;~~ for the second offense~~;~~ \$100; and for each subsequent offense \$200.

Chapter 196

STREETS AND SIDEWALKS

[HISTORY: Adopted by the Town Meeting of the Town of Marion as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Street Acceptances

[Adopted as Art. IX of the Bylaws]

§ 196-1. Requirements for acceptance.

No way shall be accepted by the Town unless it conforms to the following minimum specifications:

- A. Descriptive plan, grant of title and easements, as required, have been filed with the Selectmen.
- B. The land has been grubbed and cleared of all perishable material.
- C. The land has been graded to flow water to any existing drainage system, brook or other natural ~~rain~~drain in each side of the proposed roadway, and any drainage system required by the Planning Board has been inspected and approved by the Public Works Superintendent.
- D. The land has been cleared of boulders projecting above the subgrade level and subgrade has been inspected by the Public Works Superintendent.
- E. The effective length of the roadway has been graded to a maximum slope of 7%. If, in the opinion of the Superintendent of Public Works and the Planning Board, the topography is such that the seven-percent limit is not feasible, the gradient may be increased, but in no case may it exceed 10%.
- F. The effective length and width of the roadway has been covered with a minimum of 12 inches of stabilized gravel to a point three inches below the finished grade shown on the profile with a transverse pitch from the center line to the pavement edge of one-quarter inch per foot. All roadway and rounded areas of street intersections shall be finished with bituminous concrete, meeting current Massachusetts DPW specifications. Concrete to be applied in a two-inch binder core and a subsequent one-inch topcoat, both well rolled and compacted to maintain the pitch above noted.
- G. The width of the way conforms to the regulations of the Planning Board of the Town of Marion.

ARTICLE II

Public Way Access Permits

[Adopted 3-10-1997 STM by Art. S16 (Art. IXA of the Bylaws)]

§ 196-2. Purpose and applicability.

- A. It is the purpose of this bylaw to provide for the review of public way access permit applications to provide for predictable, timely and uniform procedures and public safety.
- B. These procedures apply to public way access permit ~~application~~applications for:
 - (1) New access to a public way.
 - (2) Physical modification to existing access to a public way.

- (3) Use of new or existing access to serve the building or expansion of a facility that generates a substantial increase in, or impact on, traffic from properties that abut the public way.

§ 196-3. Definitions.

In this bylaw, the following terms shall have the ~~meaning~~meanings prescribed below:

MODIFICATION — Any alteration of the physical or traffic operational features of the access.

PUBLIC WAY — Shall not be construed to mean a state highway pursuant to MGL c. 81, § 21.

SUBSTANTIAL INCREASE IN OR IMPACT ON TRAFFIC — That generated by a facility which meets or exceeds any of the following thresholds:

- A. Residential, including hotels, motels, lodging house and dormitories: any increase to the existing certificate of occupancy of more than 25 persons.
- B. ~~Non-residential~~Nonresidential: 250 trips per day, as defined in the ITE Trip Generation Manual, 4th Edition.
- C. ~~Non-residential~~Nonresidential: 25 new parking spaces.
- D. ~~Non-residential~~Nonresidential: 5,000 new square feet.

§ 196-4. Issuance of permits; application; fees.

The Board of Selectmen shall be responsible for the issuance and/or denial of public way access permits. A permit applicant shall request issuance of a permit on a standard form supplied by the Board of Selectmen.

- A. A permit application shall be deemed complete by the Board of Selectmen only after the following items have been submitted:
 - (1) Standard application form;
 - (2) Evidence of certification of compliance with the Massachusetts Environmental Policy Act (MEPA) by the Executive Office of Environmental Affairs of the Commonwealth, if necessary;
 - (3) Engineering plans acceptable to the Board of Selectmen, where required by the Board.
- B. The Board of Selectmen, by regulation, may adopt a schedule of reasonable fees to accompany said application.

§ 196-5. Selectmen review and decision; expert assistance.

- A. Any application for a public way access permit, other than an application pertaining to a single-family residential structure, shall be transmitted ~~to~~by the Board of Selectmen within three working days to the Planning Board for review and comment. The Planning Board shall, within 20 days of receipt of the application, report to the Board of Selectmen in writing its findings as to the safety of the proposed activity and, in the event of a finding that the proposed activity would be unsafe, its recommendations, if possible, for the adjustment thereof. Failure by the Planning Board to respond within 20 days of the receipt of the application shall be deemed lack of opposition thereto.
- B. Decision.
 - (1) Where an application is deemed complete, the Board of Selectmen shall render a decision within the following timetable, by filing same with the Town Clerk:

- (a) For an application pertaining to a single-family residential structure, 20 days;
 - (b) For any other application, 40 days.
- (2) Where the Board of Selectmen denies said application, it shall state specific findings for the denial in its decision.
- C. The Board of Selectmen may retain a qualified technical expert to assist in its assessment of the traffic impact of the proposal. The fee for such expert shall be paid by the applicant prior to the issuance, if any, of the public way access permit.

§ 196-6. Denial of application; conditions; variances.

- A. The Board of Selectmen may deny the issuance of a public way access permit due to the failure of the applicant to provide sufficient highway improvements to facilitate safe and efficient highway operations or when the construction and use of the access applied for would create a condition that is unsafe or endangers the public safety and welfare.
- B. The Board of Selectmen may, in the alternative, condition an access permit to facilitate safe and efficient traffic operations, to mitigate traffic impacts, and to avoid or minimize environmental damage during the construction period and throughout the term of the permit. Such conditions may include, but not be limited to:
 - (1) Necessary limitation on turning movements;
 - (2) Restrictions on the number of access points to serve the parcel;
 - (3) Vehicle trip reduction techniques;
 - (4) Necessary and reasonable efforts to maintain existing levels of service;
 - (5) Design and construction of necessary public way improvements by the permittee; and
 - (6) Reimbursement by the permittee of costs of Town inspection of public way improvement work.
- C. Variance. Where site or access standards do not allow the proposed access to meet these standards, the Board of Selectmen may vary application of the design standards on a case-by-case basis, upon the finding that:
 - (1) For either a private applicant or a governmental entity ~~where~~, there are no reasonable available alternatives which would allow access in compliance with these standards. In this case, the applicant must commit to provide measures to mitigate impact to traffic and operational safety, which the Board of Selectmen determines are necessary;
 - (2) As an alternative procedure for a governmental entity only, the variance is necessary to accommodate an overriding municipal, regional or state public interest, including the avoidance or minimization of environmental impacts.

§ 196-7. Time frame for completion; suspension or revocation of permit; performance bonds; enforcement orders.

- A. Construction under the terms of a public way access permit shall be completed within one year of the date of issue, unless otherwise stated in the permit. The Board of Selectmen may extend the permit for an additional year, at the written request of the permittee, filed prior to the expiration of the original construction period.

- B. When the Board of Selectmen determines that a permit condition has not been complied with, it may suspend or revoke a public way access permit if, after notice to the permittee of the alleged noncompliance, 24 hours have elapsed without compliance.
- C. The Board of Selectmen may require a performance bond to be posted by the permittee in an amount not to exceed the estimated cost of the work, or \$50,000, whichever is ~~the lesser~~less. The performance bond shall be posted prior to the issuance of the permit.
- D. The Board of Selectmen may issue written orders to enforce the provisions of this bylaw.

ARTICLE III
Temporary Repairs on Private Ways
[Adopted as Art. XXIII of the Bylaws]

§ 196-8. Authority.

The Town, acting pursuant to MGL c. 40, § 6N, ~~allowing the Town~~shall be authorized to make temporary repairs on private ways (commonly referred to as "unaccepted streets") as therein provided.

§ 196-9. Type and extent of repairs.

Such repairs may include repairs to the surface and subsurface.

§ 196-10. Drainage.

Repairs may include the installation, construction and repair of drainage.

§ 196-11. Petition; determination of necessity; abutters.

Petitions for repairs shall contain a description of the repair project, together with an estimate of the cost, be signed by a majority of the abutters and submitted to the Board of Selectmen, which, after investigation and determination, that said repairs are required by public necessity, may at its discretion recommend that Town Meeting authorize said repairs and appropriate funds ~~therefor~~therefor. For the purpose of this subsection, "a majority of abutters" shall mean the owners of more than 50% of the built-on and buildable lots abutting on the way or ways subject to the petition.

§ 196-12. Betterment charges.

Betterment charges shall be assessed for repairs performed hereunder for a maximum of five years. In general, betterment charges shall be assessed by the number of built-on and buildable lots included in the repair project, each lot sharing an equal portion of the cost. Any lot receiving benefit ~~or~~or advantage from the repair project will be included in the assessment base equally, unless otherwise determined by Selectmen, which alternative apportionment may be requested by the petitioners.

§ 196-13. Eligible ways.

Repairs may be included only on such ways that have been released from covenant and/or bond, open to the public, and the estimate for the repair project must exceed \$5,000.

§ 196-14. Town liability for damages.

The Town shall not be liable or accountable for any damage caused by repairs made pursuant to this bylaw.

Chapter 210

VEHICLES, UNREGISTERED

[**HISTORY:** Adopted by the Town Meeting of the Town of Marion as 4-23-1990 ATM by Art. 26 (Art. XVII of the Bylaws). Amendments noted where applicable.]

§ 210-1. Limitations on number of vehicles stored.

No person shall have more than one unregistered car or truck ~~un-garaged~~ungaraged on premises owned by him or under his control, except farm vehicles used exclusively upon a farm.

§ 210-2. Storage in front yard prohibited.

Under no circumstances will an unregistered car or truck be permitted to be stored in a front yard.

§ 210-3. Violations and penalties.

Penalty for a breach hereof shall be in ~~an amount not in excess~~accordance with Chapter 1, Article I, § 1-4 of ~~\$50~~these bylaws, and each day during any portion of which a violation is permitted to exist, shall constitute a separate offense.

§ 210-4. Exception.

This ~~section~~bylaw shall not apply to premises licensed under Chapter 140 of the General Laws.

Chapter 218

WATER

[HISTORY: Adopted by the Town Meeting of the Town of Marion as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Water Main Installation

[Adopted as Art. XIV of the Bylaws]

§ 218-1. Plans and specifications.

- A. No water main hereafter installed in any public or private way of the Town of Marion shall be connected to the Town water supply system until plans and specifications showing the proposed work ~~in necessary of such plans are~~ submitted to the Board of Selectmen and the Board of Selectmen has determined from examination of such plans and specifications that they give assurance that the work will conform to the provisions of this bylaw by endorsing thereon ~~their~~ approval in writing.
- B. Said water main shall be installed in accordance with the specifications ~~entitled "Specifications for the Construction of Water Mains, Marion Water Department, Marion, Massachusetts, dated February 6, 1962." Said specifications are available for inspection at the office of the Town Clerk, and were published in pamphlet form and were posted in each of the following five places within the Town of Marion:—~~
- ~~(1) Marion Town House.—~~
 - ~~(2) Marion Post Office.—~~
 - ~~(3) The New Look Barber Shop.—~~
 - ~~(4) Jensen's Store.—~~
 - ~~(5) Well's Service Station.—~~ included as an attachment to this chapter.

§ 218-2. Inspection and approval.

Any water main hereafter installed shall be inspected and approved in writing by the Water Department before it is covered in and before it is connected to the Town's water supply system.

§ 218-3. Conditions for acceptance.

- A. No water main hereinafter installed shall be accepted by the Town of Marion unless all of the foregoing requirements are hereafter complied with.
- B. No water main shall be accepted by the Town until the Town has received a grant by deed of the way, or an easement over the way, in which said main is located, to perform maintenance.
- C. No water main shall be accepted by the Town of Marion unless the total annual revenue from the users of said main shall be equal to or greater than an amount computed as follows:

Installed Cost of Main x 50% _____ Total Annual Revenue = 25 years

- D. The Town of Marion shall not hereafter install or contract for the installation of any water mains on any private property. _

§ 218-4. When effective.

- A. This bylaw, which regulates the installation and acceptance of water mains, will become effective 60 days after any necessary approval required by law.
- B. On and after the effective date of this bylaw, no main shall be accepted by the Town by means of purchase, and no Town funds are to be appropriated ~~therefore~~therefor, except this shall not apply to any water mains that were in the ground as of March 3, 1969. This bylaw shall take effect as required under MGL c. 40, § 32.

ARTICLE II

Water Use Restrictions

[Adopted 4-22-2002 ATM by Art. 20 (Art. XXVIII of the Bylaws)]

§ 218-5. Authority.

This bylaw is adopted by the Town under its police powers to protect public health and welfare and its powers under MGL c. 40, § 21 et seq., and implements the Town's authority to regulate water use pursuant to MGL c. 41, § 69B. This bylaw also implements the Town's authority under MGL c. 40, § 41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection.

§ 218-6. Purpose.

The purpose of this bylaw is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the Department of Environmental Protection.

§ 218-7. Definitions._

As used in this bylaw, the following terms shall have the meanings indicated:

ENFORCEMENT AUTHORITY — The Board of Water and Sewer Commissioners, the Department of Public Works, or other department or board having responsibility for the operation and maintenance of the water supply, the Health Department, the Town Police, and any other local designated body having police powers.

PERSON — Any individual, corporation, trust, partnership or association, or other entity.

STATE OF WATER SUPPLY CONSERVATION — A State of Water Supply Conservation declared by the Town pursuant to § 218-8 of this bylaw.

STATE OF WATER SUPPLY EMERGENCY — A State of Water Supply Emergency declared by the Department of Environmental Protection under MGL c. 21G, §§ 15 through 17.

WATER USERS or WATER CONSUMERS — All public and private users of the Town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

§ 218-8. Declaration of State of Water Supply Conservation.

The Town, through its Board of Water and Sewer Commissioners, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Board that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Conservation shall be given under § 218-9 of this bylaw before it may be enforced.

§ 218-9. Restricted water uses.

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under § 218-10.

- A. Outdoor watering days. Outdoor watering is permitted only on certain days of the week to be specified in the declaration of a State of Water Supply Conservation and public notice thereof. [Amended 11-3-2003 STM by Art. S16]
- B. Outdoor watering ban. Outdoor watering is prohibited.
- C. Outdoor watering hours. Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.
- D. Filling swimming pools. Filling of swimming pools is prohibited.
- E. Automatic sprinkler use. The use of automatic sprinkler systems is prohibited.

§ 218-10. Public notification of State of Water Supply Conservation; notification of DEP.

Notification of any provision, restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town, or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Any restriction imposed under § 218-9 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

§ 218-11. Termination of State of Water Supply Conservation; notice.

A State of Water Supply Conservation may be terminated by a majority vote of the Board of Water and Sewer Commissioners upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by § 218-10.

§ 218-12. State of Water Supply Emergency; compliance with DEP orders.

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the Department intended to bring about an end to the state of emergency.

§ 218-13. Violations and penalties.

Any person violating this bylaw shall be liable to the Town in the amount of \$50 for the first violation and \$100 for each subsequent violation. Fines shall be recovered by indictment, or on complaint before the District Court, or by ~~non-criminal~~noncriminal disposition in accordance with MGL c. 40, § 21D. Each day of violation shall constitute a separate offense.

§ 218-14. Right of entry.

Agents of the enforcement authority may enter upon any property for the purpose of inspecting and investigating any violation of this bylaw or enforcing the same.

§ 218-15. Severability.

The invalidity of any portion of provision of this bylaw shall not invalidate any other portion or provision thereof.

218 Attachment 1

Town of Marion

**Marion Department of Public Works
Water Division**

**INSTALLATION AND ACCEPTANCE OF WATER MAINS
[Amended 11-6-2012]**

GENERAL REQUIREMENTS

All materials used shall be approved by the Water Division before installation and shall be installed in accordance with the manufacturer's recommendations.

The Board of Selectmen, Water and Sewer Commissioners, reserve the right to add, delete or otherwise modify these regulations at any time.

INTRODUCTION

1. PLANS AND DIMENSIONS:

The Contractor shall furnish a complete set of plans of the proposed water main installation for approval by the Board of Water and Sewer Commissioners and Water Division prior to construction of the water main, showing a street layout, property lines and subdivision boundaries. These plans shall be made by a Registered Land Surveyor, Professional Engineer or other qualified person. The Water Division reserves the right to alter the location of the water main shown in order to provide the best method of water service.

2. RECORD DRAWINGS:

Following the completion of the installation, the Contractor shall provide the Water Division with two sets of record plans showing the actual location of all water mains, including fittings, valves, hydrants, service connections, curb stops and boxes. The Contractor shall also provide the location of gate boxes (installed over all gate valves) with at least two ties to houses, telephone poles, hydrants or other objects located within 100 feet of the respective gate box. The Contractor shall provide the location of each service box (installed over each curb stop) and corporation installed at the water main with ties from the service box and corporation to each front corner of the house into which the service is installed, together with the distance from the corporation to the curb stop.

3. DIG SAFE:

The Contractor is solely responsible for determining the actual locations of all existing utilities, including services. The Contractor shall call "Dig Safe" (1-888-344-7233) for field location of all utilities prior to commencement of construction and provide the Water Division with associated Dig Safe numbers. In addition, the Contractor shall contact the Marion DPW for water, sewer and drain line locations. Dig Safe markings shall be maintained throughout the duration of the work and remarked as necessary.

4. PROTECTION OF WORK:

All work is to be carefully protected so that no injury will come to it from water, frost, accident or other cause, and any injury that may come to the work is to be repaired by the Contractor at his expense.

5. **WORK IN PROGRESS AND FINAL:**

Extreme care shall be taken that the work and all appurtenances shall be done carefully and completely, and, if later, errors, leaks, or poor work are discovered that they shall be thoroughly repaired and rectified by the Contractor/Developer/Owner for up to one year after the acceptance of the entire system by the Water Division.

6. **SANITARY CONVENIENCES:**

The Contractor shall provide all necessary sanitary conveniences, properly secluded from public observation, and shall carry out all directions relating to same given by the Water Division.

7. **CARE OF MATERIALS:**

The Contractor shall have charge of and be liable for the loss of, or damage to, any materials delivered to him, or in the vicinity of the work to be used thereon, and shall furnish men to handle them for examination by Water Division personnel and shall keep trimmed up piles so placed as not to endanger the work. All materials so delivered, whether furnished by the Contractor or the Town, and all refuse, rubbish and materials until removed shall not occupy private land without approval of the Department of Public Works Superintendent and permission from the owner.

8. **MATERIALS TO BE REMOVED:**

The Contractor is to promptly remove from the work and its vicinity all rejected materials and the surplus earth, refuse, rubbish and excavated materials to such points as shall be directed by the DPW Superintendent and shall dispose of them without expense to the Town.

CONDITIONS OF CONSTRUCTION

1. **PIPING REQUIREMENTS:**

The piping system shall meet the following minimum requirements and shall be subject to the approval of the Water Division:

- a. Pipe shall be Ductile Iron Class 52 or Polyvinyl Chloride (PVC) C900.
- b. Hydrants shall be spaced at 500 feet maximum.
- c. Hydrants along a street shall be installed on the “short-side” of the street relevant to the water main and at the back side of sidewalks, where applicable.
- d. Every hydrant shall be equipped with a six-inch shut-off valve, bolted to the hydrant anchor tee.
- e. In-line valves shall be spaced no more than 1,000 feet apart or as determined by the Water Division.
- f. Connections to the existing water distribution system shall be made by a cut-in and installed with a tee and three valves, subject to the discretion of the DPW Superintendent. Under various circumstances, the Water Division may allow the use of a tapping sleeve and valve.
- g. Dead ends shall be avoided by looping of all water mains. Acquisition of property or easements and related engineering services necessary for looping shall be the responsibility of the developer. The Water Division Superintendent shall determine easement width. The easement shall be dedicated for the purpose of supplying water only; all other utilities, i.e., gas, electric, sewer, telephone, etc., shall be prohibited.

- h. All water mains and service pipe shall be laid in a trench separate from any other utility. The horizontal distance between water mains or service pipe and any other utility shall be a minimum of 10 feet. Exception to this rule shall be at the discretion of the DPW Superintendent.
 - i. All materials shall be in accordance with "Materials Standards." All materials shall be new and shall be of the type currently used by the Water Division.
 - j. All construction shall be in accordance with "Construction Standards." All construction shall be of the best quality, in accordance with the current practice of the Water Division.
2. **TIME FRAME FOR CONNECTIONS:**
Connections to the existing water distribution system may be made only during the period beginning April 15 and ending November 15 of one calendar year. Work outside of this timeframe is subject to approval from the DPW Superintendent.
3. **NEW SUBDIVISION AND DEVELOPERS RESPONSIBILITY:**
Connections to the existing water distribution system for new subdivisions shall be made by Water Division personnel unless otherwise authorized by the DPW Superintendent. The developer shall pay the full cost of labor, materials and equipment required for construction of the connection by Water Division personnel. Water service connections and water main tie-ins are subject to fees set forth by the Water Division.
- Construction of water mains and water service connections are generally conducted by the developer, who shall be responsible for the full cost of labor, material and equipment required for construction of the water mains and service connections. Construction of said water mains and service connections shall be as shown on the construction plans approved by the Water Division. At the request of the developer, the Water Division may waive this requirement and allow the developer to construct the water mains and service connections utilizing a contractor approved by the Water Division.
4. **PIPING SYSTEMS:**
All piping systems constructed as service connections and located on private property shall be under the control of the Water Division for the use of the premises where laid and shall be maintained at the expense of the property owner. The piping system, which includes gates, hydrants, fittings, etc., shall be maintained in accordance with the standards of the Water Division.
- All water main piping systems that are either originally or subsequently in accepted streets and/or public ways shall belong to the Water Division. These pipes will be considered a part of the Water Division water distribution system.
5. **INSPECTION OF CONSTRUCTION:**
All construction by the developer's contractor shall be subject to full-time inspection by either Water Division personnel (when available) or by personnel of its consulting Engineer. The cost of such inspection shall be charged to the developer. The developer shall coordinate the construction activity so that this full-time inspection can be provided easily and economically.
- Construction by Water Division personnel will not require inspection.
6. **WATER SYSTEM USAGE:**
The developer and/or its contractor shall not operate any hydrants, valves, curb stops or corporations, nor shall they draw any water from the system without the specific approval of the Department of Public Works Superintendent.

No contractor, developer, or any other entity shall be allowed to use Town water for building, construction, or private purposes without written authorization of the DPW Superintendent. Any such temporary water service will be subject to charges for installation and for water usage, as well as a service charge each time the Water Division has to turn it on or off. Water usage will be metered or estimated and will be charged for at the prevailing wage rates at the time of use.

Only Water Division personnel will operate valves, hydrants, corporations and curb stops, after authorization by the Department of Public Works Superintendent. Failure to conform to these requirements will result in an assessment and loss of water service.

EXCAVATION AND PREPARATION OF TRENCH

1. REGULATIONS AND PERMITS:

All excavations shall comply with the provisions of Associated General Contractors of America, Inc. (AGCA) "Manual of Accident Prevention in Construction," Occupational Safety and Health Administration (OSHA), United States Department of Labor Requirements, American National Standards Institute (ANSI) "Safety Regulations for Construction and Demolition," American Society for Testing & Materials (ASTM), American Water Works Association (AWWA) Standards and the Massachusetts Highway Department "Standard Specifications for Highways and Bridges." The Water Division also requires a Permit to Disturb Surface, Trench Permit and associated fees.

2. PROTECTION OF PROPERTY:

Care shall be taken to preserve and protect from damage all property, either public or private, along and adjacent to the line of work. All existing pipes, culverts, poles, wires, fences, mailboxes, stone walls, curbs, bounds, etc. shall be temporarily removed, supported in place or otherwise protected from injury, and shall be restored to at least as good condition as that in which they were found immediately prior to the start of work. Lawns, shrubs, bushes, planting beds and decorative trees disturbed or damaged shall be restored to a condition equal to that found prior to the start of work.

3. EXCAVATION:

All trench excavation shall be accomplished by open cut method. When excavating trenches in roadways having an improved pavement, the pavement shall be cut prior to excavation using a water-cooled abrasive saw, pneumatic chisel or a wheel cutter attached to a front-end loader. Bracing and support of all trench excavation shall meet all requirements of local and state ordinances and OSHA regulations.

4. TRENCH SIZE:

Trenches shall be excavated to the necessary width and depth for proper installation of pipe and shall have vertical sides to 12 inches above the pipe. Widths of trenches shall provide 12 inches of clearance between the sides of the trench and the outside face of the pipe. Maximum trench width (to 12 inches above the pipe) shall be pipe diameter plus 36 inches. Above 12 inches over the pipe, the maximum trench width shall be as close to the above width as installation requirements allow. Trench depth shall be a minimum of six inches below the pipe barrel, or 1/4 of the pipe diameter, whichever is greater. Trenches should be excavated to a depth that allows for a minimum of five feet of cover from the top of installed pipe to ground surface.

5. ROCK EXCAVATION:

Rock shall be removed to the limits of the trench and be removed to provide clearance of at least six inches below and on each side of all pipes, valves and fittings. Ledge shall be removed to a depth of

six inches below the bottom of pipe and at least two feet greater in width than the inside dimension of the water main.

6. PIPE BEDDING:

- 6.1. Ductile Iron Pipe: Gravel borrow shall be granular material, well graded from fine to coarse, with a maximum size of three inches, shall not contain vegetation, masses of roots or individual roots and shall be free from loam and other organic matter, clay and other fine or harmful substances.
- 6.2. Polyvinyl Chloride (PVC) Pipe: Concrete sand shall consist of clean, inert, hard, durable grains of quartz or other hard durable rock free from loam or clay, surface coatings and deleterious materials. Concrete sand shall meet ASTM C-33, and the maximum particle size shall be 3/8 inch.

7. WATER SERVICE EXCAVATION:

For services outside the paved areas, trench excavation shall be utilized. For services to be installed beneath paved surfaces, a pneumatic drive device such as a "Hole Hog" or equal trenchless method shall be utilized to drive the new service beneath the pavement.

FURNISHING AND INSTALLING WATER MAINS AND ASSOCIATED APPURTENANCES

1. PIPE:

Ductile Iron Pipe shall be Class 52, manufactured by U.S. Pipe or approved equal meeting the requirements of ANSI/AWWA C151/A21.51. All mechanical and push-on joints and gaskets shall meet the requirements of ANSI/AWWA C111/A21.11, and lining shall conform to ANSI/AWWA C104/A21.4. Thickness of cement-mortar lining shall be 1/8 inch for pipes 12 inches and smaller and 3/16 inch for pipe 14 inches and larger, and shall be seal coated per AWWA C104. Pipe shall be provided with all necessary accessories to make up the joint. Field Locking Gaskets shall be Field-Lok 350 type as manufactured by U.S. Pipe or approved equal, and shall be boltless, integral restraining system and shall be rated for 350 psi in accordance with the performance requirement of ANSI/AWWA C111/A21.11. Installation and jointing of ductile iron pipe shall be in accordance with AWWA C600 Section 9b and 9c, latest revision, as applicable.

PVC Pipe shall meet the requirements of AWWA Specification C900 and NSF Standard No. 61, shall be furnished in twenty-foot laying lengths and shall have cast iron outside dimensions. PVC pipe shall be pressure class 150 (DR-18), and each length will be tested at 800 psi. Joints shall be bell and spigot with a locked-in gasket conforming to ASTM D3139 and ASTM F477. All joint restraint systems shall be as designed and tested for use specifically with PVC pipe.

Pipe Installation: The spigot end of the pipe and the inside of the bell end of pipe shall be thoroughly cleaned prior to joining. Care shall be taken not to exceed the manufacturer's recommended maximum deflection allowed for each joint. When laying is not in progress, including lunchtime, a watertight plug shall close the open ends of the pipe. When cutting of pipe is required, the cutting shall be done by machine, leaving a smooth cut at right angles to the axis of the pipe. Cut ends of pipe to be used with a push-on type bell shall be beveled to conform to the manufactured spigot end. All ductile iron pipes shall be installed in polyethylene encasement. All PVC pipe shall be laid in trench with tracer tape at least three inches wide. No pipe shall be laid in water, in an unsuitable trench, or during unsuitable weather conditions.

2. PIPE FITTINGS:

Ductile Iron Pipe Fittings shall be used for all ductile iron and PVC pipe. All fittings shall meet the requirements of ANSI/AWWA C153/A21.53, shall have a pressure rating of 350 psi, lining and coating the same as pipe, mechanical joint in compliance with ANSI/AWWA C111/A21.11 and marking on fittings shall comply with ANSI/AWWA C110/A21.10.

- 2.1 Anchor Tees: shall be mechanical joint, each having a bell and plain end, with a split mechanical joint on the plain end. Gate valves shall be secured directly to the tee by using the standard mechanical joint gasket and standard bolts.
- 2.2 Retainer Gland: shall be cast of high-strength ductile iron and fitting with ductile iron wedging devices and twist-off pressure nuts.
- 2.3 Couplings: shall be cast or ductile iron, consisting of a middle ring, two rubber gaskets, and the followers with stainless steel bolts and nuts. Coupling and gasket shall be sized for the particular application intended.
- 2.4 Plugs: shall be ductile iron with mechanical joint push-on and retainer feature and shall be provided with a threaded corporation or bleeder valve so that air and water pressure can be relieved prior to future connection.
- 2.5 Sleeves: shall be ductile iron with mechanical joint, long body style meeting or exceeding the requirements of ANSI/AWWA C110/A21.10 or latest revision thereto.
- 2.6 Transition Couplings: shall be Dresser Style 162 as manufactured by Dresser Industries Inc., or approved equal.
- 2.7 Sleeve-type couplings (PVC pipe only): shall be from domestic manufacturer equal to Style 153 for cast iron pipe and asbestos cement pipe, manufactured by Dresser Mfg. Div., Bradford, Pennsylvania or approved equal. Couplings shall be furnished with the pipe stop removed. Couplings shall be provided with plain, Grade 27, rubber gaskets and with black, steel, track-head, corrosive-resistant bolts with nuts.

3. POLYETHYLENE ENCASEMENT:

Polyethylene encasement shall be according to ANSI/AWWA C105/A21.5 seamless and shall be manufactured of virgin polyethylene material conforming to the requirements of ANSI/ASTM Standard Specification D1248. The specified nominal thickness for low-density cross-laminated polyethylene film is 0.008 inch (eight mils) and 0.004 inch (four mils) for high-density cross-laminated polyethylene film.

Polyethylene encasement shall be provided for the entire length of new ductile iron water main and at all side street connections, and installed in accordance with AWWA C105, Method A and per manufacturer's specifications. All lumps of clay, mud, cinders etc. on the pipe surface shall be removed prior to installation, and during installation, soil or embedment material shall not be trapped between the pipe and the polyethylene. The polyethylene shall be fitted to the contour of the pipe creating a snug but not tight encasement with minimum space between the polyethylene and the pipe. Sufficient slack shall be provided in contouring to prevent stretching the polyethylene cause by backfilling operations. Overlaps and ends shall be secured with adhesive tape provided by the manufacturer.

4. BURIED VALVES AND APPURTENANCES:

Resilient Seated Gate Valves shall meet the requirements of ANSI/AWWA C509 and shall be manufactured by M&H, Type 4067, rated for 200 psi and tested to 400 psi, or approved equal. Valves

shall have ductile iron body, bronze stem, fully encapsulated wedge, epoxy-coated interior and exterior, non-rising stem with two O-ring stem seals, two-inch square operating nut and open counter clockwise (left). Generally, valves shall be set and aligned plumb, supported by a flat stone or solid concrete block, with the trench bottom being firmly compacted.

Valve Boxes shall be of domestic manufacturer, shall be two-piece sliding type, have a cast iron body and cover with the word "WATER" cast into the cover in raised letters, and the valve box barrel shall not be less than 5 1/4 inches in diameter. Valve boxes shall be set centered and plumb over the operating nuts of all direct burial valves. The top of each valve box shall be set to finished grade with at least 10 inches of overlap remaining between the upper sections for future vertical adjustment. Minimum overlap for lower, extension pieces shall be six inches.

5. **HYDRANTS:**

Hydrants shall be in full compliance with AWWA C502 and shall be U.S. Metropolitan 250, Model 94. No substitutions shall be allowed. Hydrants shall have barrel sections of 5-1/4-inch diameter, five-foot-six-inch bury, two 2-1/2-inch hose nozzles, one 4-1/2-inch pumper outlet, replaceable brass nozzles, breakaway flange, six-inch mechanical joint shoe and shall open counter-clockwise (left). Hydrant color shall be red.

Hydrant drainage pit shall be approximately three feet in diameter and filled with compacted crushed stone. An additional six inches of crushed stone shall be placed above the hydrant drain ports. Thrust blocking shall be placed behind the shoe of the hydrant, taking care not to block the drain outlets. The hydrant shall be set plumb and to the proper grade and shall remain properly supported until it is backfilled. After the hydrant has been set, it shall be entirely draped with burlap and remain covered until the water distribution system has been accepted and put into service.

6. **THRUST BLOCKS AND JOINT RESTRAINTS:**

Concrete thrust blocks strength shall be 4,000 psi after 28 days and shall be provided at all hydrants and fittings. Backs shall be placed against undisturbed earth, felt roofing paper shall be placed to protect pipe joints and concrete shall not be placed over bolts or nuts.

Mechanical joint restraints shall conform to ASTM A536 and shall be Megalug 1100 Series as manufactured by EBAA Iron Sales Inc., Eastland Texas or approved equal. The joint restraints shall have ductile iron wedges heat treated to a minimum hardness of 370 BHN, shall have a minimum working pressure of 350 psi for pipe diameters up to 16 inches with a minimum safety factor of 2:1 and shall be twist-off nuts. Mechanical joint restraint devices shall be installed at all fittings in accordance with the manufacturer's written instructions.

FURNISHING AND INSTALLING WATER SERVICES

1. MATERIALS:

Service tubing shall conform to AWWA C901 Polyethylene Pressure Pipe and Tubing. Service tubing shall be Endopure polyethylene tubing as manufactured by Endot Industries Inc. or approved equal, shall be rated for 200 psi, have an outside diameter of copper size tube, stainless steel inserts at connection points, blue exterior and lifetime guarantee. Service tubing between the corporation stop and the curb stop shall be one piece installed with No. 12 trace wire. Service tubing between the curb stop and the house shall be one piece.

Corporation stops shall comply with C800, Underground Service Line Valves and Fittings, and shall be manufactured by Mueller, Ford or Cambridge Brass or approved equal.

Corporation stops shall have cast brass alloy body, ball type, double O-ring seals and be rated for 300 psi working pressure.

Curb stops shall comply with AWWA C800, Underground Service Line Valves and Fittings, and shall be manufactured by Mueller, Ford, or Cambridge Brass or an approved equal. Curb stops shall have cast brass alloy body, ball type, polytetrafluoro ethylene (PTFE) coated ball, quarter-turn check, double O-ring seals, compression ends for copper tubing size (CTS) outside diameter (OD) tubing, non-draining type, rated for 300 psi working pressure and shall open counter-clockwise (left). Tubing shall be connected to the curb stop and compression joints tightened. Duct tape shall be installed over the outlet end of curb stops to be left for future connections.

Curb boxes shall be of domestic manufacture by Mueller, Ford, Hayes or approved equal. Curb boxes shall be 2 1/2 inches buffalo-style slide-type boxes, tar coated, cast iron arch pattern base with flush-mounted covers, brass pentagon nut, and cover with the word "WATER" cast into the cover.

Service Saddles shall meet all applicable parts of ANSI/AWWA C800 and shall be manufactured by Smith-Blair or approved equal. Service saddles shall have ductile iron body, double stainless steel strap design and AWWA threads with Buna-N rubber gasket. Service saddles shall be used on all corporations larger than one inch installed in water mains smaller than 12 inches in diameter.

2. INSTALLATION:

For services outside paved areas, trench excavation shall be utilized, with tubing being carefully laid in the bottom of the trench, backfilled and compaction completed. Care shall be taken to protect against kinks or crushed areas. Backfill around and to one foot over the tubing shall not contain stones greater than one inch in diameter. For services to be installed beneath paved surfaces, a pneumatic drive device such as "Hole Hog" or approved equal trenchless method shall be utilized to drive the new service beneath the pavement. No. 12 tracer wire shall be installed on all water service lines.

BACKFILLING AND COMPACTING

1. MATERIALS:

Suitable materials for trench backfill shall be the material excavated during the course of construction, but excluding debris, pieces of pavement, frozen materials, organic matter, silt, topsoil, ledge excavation and rocks over six inches in diameter. If material excavated from the trench is determined to be unsuitable, it shall be removed from the construction site and replaced with suitable backfill material at the Contractor's expense. The use of flowable fill will be required at the discretion of the DPW Superintendent or as outlined in the special conditions of the Permit to Disturb Surface. All pipes

and structures are to be laid on a stable foundation. If material at grade is determined to be unsuitable, it shall be excavated to a further depth and/or width, and refilled with an approved material. Refill material shall be structural fill, gravel borrow or crushed stone. All surplus excavated material and any material unsuitable for use shall be disposed of in disposal areas designated by the Water Division.

2. **INSTALLATION:**

Backfill shall be placed in twelve-inch-deep loose measure uniform layers. Each layer shall be thoroughly compacted by rolling, tamping or vibrating with approved mechanical or pneumatic compacting equipment so that pipe, structures, paving and other construction will not settle at the time of construction or in the future. Care shall be taken to compact the backfill materials throughout the full width of the excavation beneath all pipes and structures. The backfilling of trenches shall proceed as soon as the laying of pipe or installation of structures will allow. Compaction tests may be required at the discretion of the Water Division.

ASPHALTIC CONCRETE PAVEMENT

1. **MATERIALS:**

Binder and Top Course: shall be Class I asphaltic concrete pavement conforming to Section 420, 460 and M3 of the Standard Specifications.

Asphaltic Tack Coat: shall consist of either emulsified asphalt, Grade RS-1 conforming to Section M3.03.1, or cutback asphalt, Grade RC-70 or RC-250 conforming to Section M3.02.0 of the Standard Specifications.

Pavement Marking Paint: shall be High Heat Rapid Drying Traffic Marking Material conforming to Section M7.01.09 (Yellow High Heat Rapid Drying Traffic Marking Material) of the Standard Specifications.

2. **INSTALLATION:**

Temporary trench pavement shall be installed over 12 inches of gravel sub-base to a compacted thickness of two inches.

Permanent trench pavement shall include removal of temporary trench pavement to the gravel sub-base if applicable. The gravel sub-base shall be recompact before the installation of permanent pavement. The binder course shall be laid and compacted to a thickness of two inches and the top course shall be laid and compacted to a thickness of two inches, for a total compacted permanent pavement thickness of four inches.

Full-width pavement overlay shall be installed at the discretion of the Water Division and may or may not require the existing road surface to be cold planed prior to application. Full-width pavement compacted thickness is also at the discretion of the Water Division. All pavement activities shall be in accordance with the Commonwealth of Massachusetts Department of Transportation Standard Specifications for Highways and Bridges, and the Marion Highway Division.

PRESSURE TESTING OF WATER MAINS

1. MATERIALS:

The Water Division shall furnish water to the Contractor for flushing and testing the water main if hydrants or other connection points are convenient to the work. Fees for water usage may apply.

2. PROCEDURE:

A formal pressure/leakage test shall be required of the water mains, valves and appurtenances in the system constructed and shall be conducted in accordance with AWWA C600, Section 4.

- 2.1 Where any section of a water main is provided with concrete thrust blocks, the test shall not be made until at least five days have elapsed since the concrete was placed.
- 2.2 If high-early-strength cement is used in the concrete thrust blocks, the test shall not be made until at least two days have elapsed since the concrete was placed.
- 2.3 Prior to testing the pipe line, the line to be tested shall be thoroughly flushed and all air expelled. All air shall be expelled by appropriate methods including the use of corporation stops installed by the contractor at high points along the water main.
- 2.4 After all the air has been expelled and the corporation stops closed, the test pressure shall be applied by means of a pump connected to the pipe.
- 2.5 The pump, pipe connections, gauges and all necessary equipment shall be furnished by the contractor.
- 2.6 Unless otherwise specified, the test pressure shall be 150 psi or 150% to the working pressure, whichever is greater, up to a maximum pressure of 250 psi.
- 2.7 Pressure shall be maintained for two hours.
- 2.8 Should the pipe line not come within the permissible leakage limits, the Contractor shall be required to excavate and locate the source of leakage and make repairs.
- 2.9 After the Contractor has notified the Water Division that repairs have been made, the test shall be repeated until the pipeline is within the allowable leakage.

DISINFECTION OF WATER MAINS

1. MATERIALS:

Water for flushing of water mains, preparation of chlorine solutions and filling of water mains for disinfection shall be potable drinking water.

Chlorine for preparation of chlorine solutions for disinfection shall be sodium hypochlorite or calcium hypochlorite and shall conform to the requirements of ANSI/AWWA B300. Chlorine solutions shall be neutralized using sodium bisulfate, sodium sulfate or sodium thiosulfate prior to disposal.

Sterile water sample bottles shall be obtained from a state-certified laboratory. Sterile bottles for bacteriological analyses shall be treated with sodium thiosulfate to neutralize any residual chlorine.

2. PROCEDURE:

- 2.1 Water Main Disinfection: After completion of all water-main-related construction, except water service connection installation, all water mains, valves, hydrants, hydrant connections and other appurtenances installed shall be disinfected in accordance with AWWA Standard C651, Section 4.4.3 (Continuous Feed Method) as modified herein:
 - 2.1.1 The Contractor, at no additional expense to the Owner, shall install taps for flushing, chlorination and sampling.
 - 2.1.2 Flush the new water mains with potable water to remove any contaminants and debris that may have entered the water mains during construction.
 - 2.1.3 The flushing velocity in the new water main shall not be less than 2.5 feet per second. In the absence of a flow meter, flow rate shall be determined either by placing a pitot gauge at the discharge or by measuring the time to fill a container of a known volume.
 - 2.1.4 Prepare a chlorine solution that will be continuously fed into the potable water that is used to fill the new water mains.
 - 2.1.5 The chlorine solution shall be applied to the new water mains with a chemical feed pump designed to feed chlorine solutions.
 - 2.1.6 Completely fill the new water mains with the chlorinated, potable water or remove any air pockets. The point of application shall be no more than 10 feet downstream from the beginning of the new water mains.
 - 2.1.7 The chlorine solution shall be of sufficient strength to provide a minimum residual chlorine concentration of 25 milligrams per liter (mg/l) in the filled water mains.
 - 2.1.8 New valves and hydrants shall be operated to allow for proper disinfection.
 - 2.1.9 Isolation valves shall be maintained in a closed position to prevent chlorinated water from entering the existing water distribution system.
 - 2.1.10 Chlorinated water shall remain in the main for a minimum of 48 hours.
 - 2.1.11 The minimum residual chlorine concentration at the end of the forty-eight-hour holding period shall be 10 mg/l.
 - 2.1.12 After the forty-eight-hour retention period, chlorinated water shall be flushed from every hydrant branch on the main until the chlorine concentration leaving the main is no higher than that generally in the system or less than 1.0 mg/l.
 - 2.1.13 Chlorinated water shall be discharged in a manner that will not adversely affect flora and fauna or drainage courses and shall conform to applicable state regulations for waste discharge.
 - 2.1.14 Chlorinated water that is flushed from the mains shall be neutralized by the addition of dechlorinating agent so that the residual chlorine concentration is zero.

- 2.2 Bacteriological Tests: A minimum of 24 hours after flushing and before the new water mains are placed in service, the Contractor shall collect water samples for testing the bacteriological quality of the water.
- 2.2.1 No hose or fire hydrant shall be used in the collection of samples.
- 2.2.2 A sampling tap shall consist of a standard corporation stop installed in the main with a PVC gooseneck assembly. Samples for bacteriological testing shall be collected in sterile bottles treated with sodium thiosulfate and furnished by the state-certified laboratory that will perform the tests. Unless otherwise directed, the minimum number of samples for bacteriological analysis shall be as follows:
- 2.2.2.1 One sample every 1,200 linear feet of newly installed water mains.
- 2.2.2.2 One sample at the end of the newly installed water mains.
- 2.2.2.3 One sample at each branch.
- 2.2.3 Two rounds of sampling shall be conducted. The second round of sampling shall be conducted at a minimum of 24 hours after the first round of samples is taken.
- 2.2.4 All bacteriological tests shall be performed by a state-certified laboratory.
- 2.2.5 Two bacteriological tests shall be performed on all samples:
- 2.2.5.1 One coliform bacteria; and
- 2.2.5.2 One heterotrophic plate count (HPC) bacteria.
- 2.2.6 The results on all samples and a copy of the chain of custody shall be mailed directly to the Water Division from the laboratory.
- 2.2.7 The disinfection procedure shall be considered satisfactory only if the results of all tests confirm the following:
- 2.2.7.1 The absence of coliform bacteria in all samples taken; and
- 2.2.7.2 The HPC bacteria are less than 500 colony-forming units per milliliter (cfu/ml) in all samples taken or less than or equal to the HPC bacteria count in the existing water system.
- 2.2.8 The new water mains may be placed in service if the results of the disinfection procedure are satisfactory and the Water Division has granted permission.
- 2.2.9 If the initial disinfection procedure fails to produce satisfactory results, the new water mains shall be flushed and re-sampled as described above. If the test results from the re-sampling also fail to produce satisfactory results, the entire disinfection procedure shall be repeated.

Chapter 230

ZONING

[HISTORY: Adopted by the Town Meeting of the Town of Marion 4-23-1984 ATM by Art. 32 (Art. X of the Bylaws). Amendments noted where applicable.]

ARTICLE I

Title, Authority and Purpose

§ 230-1.1. Title.

This bylaw shall be known and cited as the "Zoning Bylaws, Town of Marion, Massachusetts."

§ 230-1.2. Authority.

This bylaw is authorized and may be changed or amended in the manner provided in the Zoning Act (MGL c. 40A).

§ 230-1.3. Purpose. [Amended 4-23-1985 ATM by Art. 21; 3-28-1989 STM by Art 1; 6-18-1990 STM by Art. 4]

This bylaw is adopted to provide procedures to implement home rule powers. The objectives of this Zoning Bylaw include, but are not limited to, the following: to lessen congestion in the ~~streets~~streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land and water throughout the Town; including consideration of the recommendation of the Master Plan or Land Use Plan, if any, adopted by the Planning Board and the Comprehensive Plan, if any, of the Regional Planning Agency; and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

~~A. — Open space. In General Business, Marine Business and Limited Industrial Districts, it is desirable that a portion of each lot be left in an unpaved, unbuilt-upon condition, after allowing for the parking space required by § 230-6.5, with a goal of a minimum of 20% of the lot area in this open condition.~~

§ 230-1.4. Validity.

The invalidity of any section of provision of this Zoning Bylaw shall not invalidate any other section or provision thereof.

ARTICLE II
Administration

§ 230-2.1. Enforcement; certificates of occupancy and use permits; violations and penalties.
[Amended 6-18-1990 STM by Arts. 10, 13; 4-25-1994 ATM by Art. 24]

- A. This bylaw shall be enforced by the Building Commissioner. No building shall be built or altered or a building begun or changed without a permit having been issued by the Building Commissioner.
- B. No building, whether residential or nonresidential, shall be occupied until a certificate of occupancy has been issued by the Building Commissioner.
- C. For any proposed new or change of nonresidential use of land or buildings, and any home occupations requiring use of buildings or lot space outside of the principal residential building, the Building Commissioner shall issue a use permit stating that the use is in conformance with the requirements of this bylaw. Applications for a use permit shall be filed with the Building Commissioner prior to changing the use of the property and shall be allowed or denied in writing, including the cause of the action taken, within seven days of receipt of the application. No such new or ~~change~~changed use shall be allowed except upon the issuance of a use permit.
- D. Any person violating any of the provisions of this bylaw may be fined not more than ~~\$50~~\$300 for each offense. Each day that such violation continues without abatement shall constitute a separate offense.

§ 230-2.2. Board of Appeals.

A Board of Appeals shall be appointed as provided in MGL c. 40A consisting of five members for terms of five years each and three associate members for terms of three years each. The term of one member and one associate member will expire on May 31 of each year. When a vacancy occurs by resignation or otherwise, it shall be filled within 30 days for the unexpired term in the same manner as an original appointment.

§ 230-2.3. Powers of Board of Appeals.

- A. Permits. Applications may be made directly to the Board of Appeals for any permit which said Board is authorized to grant by virtue of this bylaw.
- B. Appeals. [Amended 6-18-1990 STM by Art. 10]
 - (1) Appeals may be taken to the Board of Appeals by any officer, or board of the Town, or any person aggrieved by an order or decision in violation of, or being unable to obtain a permit under, any provisions of MGL c. 40A or any provisions of this bylaw.
 - (2) Appeals from decisions of the Building Commissioner relative to the location of district boundaries shall be considered as follows:
 - (a) Zone boundary lines designated by property lines, street lines, easement lines, without giving dimensions, are the nearest to such lines existing when this zone was established.
 - (b) Zone boundary lines drawn nearly parallel to street lines shall be considered parallel and at the given offset dimension measured at right angles to the street.
 - (c) Zone boundary lines not otherwise defined shall be determined by the measured distance from adjacent map features.

- C. Special permits. ~~The Board of Appeals shall hear and decide applications for s~~Special permits ~~may be authorized~~ for specific uses for which the Board is ~~by~~ the designated special permit granting authority.
- D. Variances. Variances may be granted by the Board of Appeals with respect to particular land or structures from the terms of the applicable Zoning Bylaw when a particular use or dimensional variance is sought and when it specifically finds that, owing to circumstances relating to the soil condition, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw. Variances properly granted prior to January 1, 1976, but limited in time may be extended on such terms and conditions that were in effect for such variances upon said effective date.

§ 230-2.4. Public hearings.

Special permits, variances, permits and relief may be granted by the Board of Appeals only after a public hearing, for which posting and proper notification has been given, as provided in MGL c. 40A.¹

ARTICLE III Districts

§ 230-3.1. Types of districts. [Amended 4-4-1989 STM by Art. 6; 6-18-1990 STM by Arts. 1, 4; 5-13-2013 ATM by Art. 31; 5-12-2014 ATM by Art. 39]

For the purposes of this bylaw, the Town of Marion is hereby divided into the following types of use districts:

Residence A
Residence B
Residence C
Residence D
Residence E
General Business
Marine Business
Limited Industrial
Limited Business
Flood Hazard District
Water Supply Protection District
Aquifer Protection District
Open Space Development District ~~(See Section 12)~~
Surface Water District
Wireless Communications Facilities Overlay District
Sippican River Overlay District
Municipal Solar Overlay District

¹. Editor's Note: Original Sec. 2.5, Nonresidential Plan and Site Evaluation, which immediately followed this section, was repealed 3-28-1989 ATM by Art. 2.

§ 230-3.2. Zoning Map. [Amended 12-15-1987 STM by Art. 14; 4-4-1989 STM by Art. 8; 6-18-1990 STM by Arts. 3, 14; 10-25-1999 STM by Art. S2; 5-21-2012 ATM by Art. 31; 10-28-2013 STM by Art. S11; 5-12-2014 ATM by Art. 39]

- A. Location of districts. Said districts, with the exception of the Flood Hazard District, are located and bounded as shown on a map entitled "Zoning Map of the Town of Marion," dated May 12, 2014, and filed with the Town Clerk, together with the amendments thereto. The Zoning Map, with all explanatory matter thereon, is hereby made a part of this bylaw. The boundaries of all land use zoning districts adjoining tidal waters shall extend to the low water mark as defined in Chapter 91 Regulations promulgated by the Massachusetts Department of Environmental Protection.
- B. Flood Hazard District. The Floodplain/Flood Hazard District ~~is herein established as an overlay district. The District~~ includes all special flood hazard areas within the Town of Marion designated as Zone A, AE, AO, or VE on the Plymouth County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Plymouth County FIRM that are wholly or partially within the Town of Marion are panel numbers 25023C0468J, 25023C0469J, 25023C0556J, 25023C0558J, 25023C0566J, 25023C0586J, and 25023C0587J dated July 17, 2012, and panel numbers 25023C0557K, 25023C0559K, 25023C0567K, 25023C0576K, 25023C0578K, and 25023C0579K dated February 5, 2014. The exact boundaries of the district may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Plymouth County Flood Insurance Study (FIS) report dated July 17, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Marion Town Clerk.
- (1) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in the floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - (2) Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A Zones.
 - (3) Man-made alteration of sand dunes within Zone VE which would increase potential flood damage are prohibited.
 - (4) All subdivision proposals must be designed to assure that:
 - (a) Such proposals minimize flood damage;
 - (b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - (c) Adequate drainage is provided to reduce exposure to flood hazards.
 - (5) The Floodplain District is established as an overlay district to all other districts.
 - (a) All development in the district, including structural and ~~non-structural~~nonstructural activities, whether permitted by right or by special permit, must be in compliance with MGL c. 131, § 40 and with the following:
 - [1] Sections of the Massachusetts State Building Code (780 CMR) which address floodplain and coastal hazard areas;
 - [2] Wetlands Protection Regulations, Department of Environmental Protection, (DEP) (currently 310 CMR 10.00);

- [3] Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
 - [4] Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);
 - [5] Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15.00).
- (b) Any variances from the provisions and requirements of the above--referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.
- (6) Within riverine floodplains, the Building Commissioner or his/her designee shall notify the following of any alteration or relocation of a watercourse:
- (a) Abutting cities and towns;
 - (b) NFIP State Coordinator (c/o Massachusetts Department of Conservation and Recreation, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104); and ~~the~~
 - (c) NFIP Program Specialist (c/o Federal Emergency Management Agency, Region I, 99 High Street, 6th Floor, Boston, MA).
- C. Water Supply Protection Area (See § 230-8.2.): as delineated on the Zoning Map of the Town of Marion, dated May 12, 2014.
- D. Wireless Communications Facilities Overlay District: as delineated on the Zoning Map of the Town of Marion, dated May 12, 2014.

ARTICLE IV Use Regulations

§ 230-4.1. General provisions regarding permitted principal uses.

- A. Principal uses and districts in which they are permitted are identified in the Table of Use Regulations below. Uses which are necessarily and customarily incidental ~~dential~~ to principal uses, including accessory signs and off-street parking, are also permitted in compliance with the provision of this bylaw.
- B. Except as may be provided otherwise in this bylaw, no building or structure shall be constructed, and no building, structure or land or part thereof, shall be used for any purpose or manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located or set forth as permissible by special permit in said district as so authorized.

§ 230-4.2. Table of Principal Uses.

Symbols Used	
R	Residential District (includes Residence A, B, C, D)
RE	Multifamily Residence District
GB	General Business District
LB	Limited Business District
MB	Marine Business District
LI	Limited Industrial District
CP	Campus Office Park District
Y	Permitted Use

Symbols Used	
N	Not a Permitted Use
BA	Special Permit Required from Zoning Board of Appeals
PB	Special Permit Required from Planning Board
MSOD	Municipal Solar Overlay District

Table of Principal Use Regulations

[Amended 12-11-1984 STM by Art. 6; 11-19-1985 STM by Arts. 8, 9, 10; 12-15-1987 STM by Art. 15; 4-4-1989 STM by Art. 6; 6-18-1990 STM by Arts. 1, 4, 9, 11, 16; 3-10-1997 STM by Art. S11; 4-28-1997 ATM by Art. 32; 11-13-2000 STM by Art. S2; 4-22-2002 ATM by Art. 21; 11-3-2003 STM by Art. S19; 5-13-2013 ATM by Art. 31; 5-12-2014 ATM by Arts. 36, 37]

	Districts							
Principal Uses	R	RE	GB	LB	MB	LI	CP	MSOD
A. Residential Uses								
Dwelling, single-family	Y	Y	Y	Y	Y	BA	N	N
Conversion to 2 dwelling units	BA	BA	BA	BA	BA	BA	N	N
Dwelling Multiple-unit rental housing in same building as principal nonresidential use	N	N	Y PB	Y PB	N PB	N PB	N	N
Rooming house	PB	PB	PB	PB	N	N	N	N
Association piers	PB	N	N	N	Y	N	N	N
Piers, accessory	PB	N	N	N	PB	N	N	N
Conservation subdivision	PB		N	N	N	N	N	N
B. Institutional or Exempt Uses								
Use of land or structure for religious purposes	Y	Y	Y	Y	Y	Y	Y	N
Use of land or structure for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation as allowed by MGL	Y	Y	Y	Y	Y	Y	Y	N
Child-care facility in existing building	Y	Y	Y	Y	Y	Y	Y	
Child-care facility in new building	PB	PB	PB	PB	PB	PB	PB	N
Use of land for the primary purpose of agriculture, horticulture, floriculture or viticulture on a parcel of more than 5 acres in areas as allowed by MGL	Y	Y	Y	Y	Y	Y	Y	N
Facilities for the sale of produce and wine and dairy products, provided that during the months of June, July, August and September	Y	Y	Y	Y	Y	Y	Y	N

	Districts							
Principal Uses	R	RE	GB	LB	MB	LI	CP	MSOD
of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have <u>has</u> been produced by the owner of the land containing more than 5 acres in area on which the facility is located as allowed by MGL								
Hospital	PB	PB	PB	PB	N	PB	N	N
Municipal facilities	Y	Y	Y	Y	Y	PB	N	Y
Essential services	PB	PB	PB	PB	PB	PB	N	N
C. Service Uses								
General service establishment	N	N	Y	N	N	PB	PB	N
Personal service establishment	N	N	Y	PB	Y	PB	Y	N
D. Recreational Uses								
Camp, nonprofit	PB	PB	PB	N	N	PB	N	N
Club, nonprofit	PB	PB	PB	N	N	PB	N	N
Club, for-profit	N	N	PB	N	N	PB	N	N
Commercial recreation, indoor	N	N	PB	N	N	PB	N	N
Commercial recreation, outdoor	N	N	PB	N	N	PB	N	N
E. Office Uses								
Bank or financial services office	N	N	Y	PB	Y	PB	Y	N
Business or personal office	N	N	Y	Y	PB	Y	Y	N
Medical office or clinic	PB	N	Y	PB	PB	PB	Y	N
F. Restaurant Uses								
Restaurant	N	N	Y	PB	Y	PB	N	N
Restaurant, outdoor	N	N	PB	PB	N	PB	N	N
Restaurant, fast-food	N	N	PB	N	N	N	N	N
Restaurant, drive-in	N	N	N	N	N	N	N	N
G. Retail Uses (under 5,000 square feet)								
General retail establishment	N	N	PB	PB	PB	N	N	N
Storage and sale of building materials	N	N	N	N	N	Y	N	N
Storage and sale of fuel oil	N	N	N	N	N	Y	N	N
Non-exempt <u>Nonexempt</u> roadside farm stand	Y	Y	Y	Y	Y	PB	Y	N
Nursery	PB	PB	Y	Y	Y	PB	N	N
Commercial greenhouse	PB	PB	Y	Y	Y	PB	Y	N
Major commercial project (MCP)	N	N	PB	PB	PB	PB	PB	N
H. Major Commercial Uses (any use allowed in the "Table of Principal Uses" under the heading "Subsection G., Retail Uses", with a gross floor area of more than 5,000 square feet)	N	N	PB	PB	PB	PB	PB	N

Town of Marion Final Draft (Red-Line)

	Districts							
Principal Uses	R	RE	GB	LB	MB	LI	CP	MSOD
I. Motor Vehicle Related Uses								
Motor vehicle service station	N	N	Y	Y	Y	PB	N	N
Motor vehicle general repair	N	N	Y	N	N	PB	N	N
Motor vehicle body repair	N	N	Y	N	N	PB	N	N
Motor vehicle sales or rental	N	N	PB	N	N	PB	N	N
Motor vehicle junkyard or graveyard	N	N	N	N	N	N	N	N
J. Marine-Related Uses								
Vessel or boat storage or sales	N	N	Y	PB	Y	PB	N	N
Marina	N	N	N	N	Y	N	N	N
Commercial pier	N	N	N	N	Y	N	N	N
K. Miscellaneous Commercial Uses								
Adult use	N	N	PB	N	N	N	N	N
Body art parlor or studio	N	N	PB	N	N	N	N	N
Art gallery	PB	PB	Y	Y	N	PB	N	N
Bed-and-breakfast	BA	N	BA	BA	N	N	N	N
Non-exempt Nonexempt educational use	PB	PB	Y	Y	N	PB	N	N
Nursing or convalescent home	PB	PB	PB	PB	PB	PB	N	N
Adult daycare day-care facility	PB	PB	PB	PB	PB	PB	N	N
Contractor's yard	N	N	Y	N	N	PB	N	N
Landscaper's yard	N	N	Y	N	N	PB	N	N
Truck garden	Y	Y	Y	Y	Y	PB	N	N
L. Industrial Uses								
Light manufacturing	N	N	PB	N	N	Y	N	N
Research laboratory	N	N	N	N	N	Y	N	N
Warehouse	N	N	N	N	N	PB	N	N
Assembly	N	N	N	N	N	Y	N	N
Manufacture of electronic components	N	N	N	N	N	Y	N	N
Fabrication	N	N	N	N	N	Y	N	N
M. Accessory Uses								
Home occupation	Y	PB	Y	PB	Y	PB	N	N
Accessory scientific use	PB	PB	PB	PB	PB	PB	N	N
Family day care, small	PB	PB	PB	PB	N	PB	N	N
Family day care, large	PB	PB	PB	PB	N	PB	N	N
Above-ground Aboveground fuel storage accessory to nonresidential principal use	N	N	PB	PB	PB	Y	N	N
Underground fuel storage accessory to nonresidential principal use	N	N	PB	N	N	Y	N	N
Outside storage of more than 2 unregistered motor vehicles or equipment used for construction purposes	BA	N	BA	BA	BA	BA	N	N

	Districts							
Principal Uses	R	RE	GB	LB	MB	LI	CP	MSOD
N. Other Uses								
Drive-in or drive-through window, excluding restaurant	N	N	PB	N	PB	PB	PB	N
Windmills	Y	N	Y	Y	Y	Y	N	N
Medical marijuana dispensary, treatment centers	N	N	N	N	N	PB	N	N
Solar systems (1)	Y	Y	Y	Y	Y	Y	Y	Y
Solar farms (2)	PB	PB	PB	PB	PB	PB	PB	Y

NOTES:

(1) In certain circumstances, solar systems require a special permit from the Planning Board. See Article XVI of the Zoning Bylaw.

(2) Solar farms include ground-mounted solar PV systems as defined in § 230-8.13B and § 230-16.2 of the Zoning Bylaw.

ARTICLE V
Intensity of Use Regulations

§ 230-5.1. Lot, yard and height requirements. [Amended 3-28-1989 STM by Art. 4; 4-4-1989 STM by Art. 7; 6-18-1990 STM by Arts. 1, 2, 4, 11, 15; 4-24-1995 ATM by Art. 36; 6-4-1996 STM by Art. S4; 10-28-1997 STM by Art. S3; 4-26-1999 ATM by Arts. 20, 21; 10-25-1999 STM by Art. S1; 11-13-2000 STM by Art. S3; 4-29-2003 STM by Arts. S4, S8; 4-25-2005 ATM by Art. 30]

A dwelling hereafter erected in any district and a building hereafter in any Business, Limited Industrial ~~or Campus Office Park~~ or Open Space Development District, shall be located on a lot having not less than the minimum requirements set forth in the table below, and no more than one dwelling shall be built on such a lot except as may be allowed in the Residence E and the Open Space Development District or by special permit where otherwise authorized by these Zoning Bylaws. No existing lot shall be changed in size or shape so as to result in the violation of the requirements set forth below.

Dimensional Requirements Table					
District	Minimum Lot Size (square feet) ⁽⁹⁾	Minimum Lot Frontage (feet)	Minimum Front Yard Setback (feet)	Minimum Side and Rear Setback ⁽¹⁰⁾ (feet)	Maximum Building Height (feet)
Residence A ⁽⁴⁾	21,780 (0.5 acre)	125	35	15	35
Residence B ⁽¹⁾⁽⁴⁾	43,560 (1 acre)	150	35	20	35
Residence C ⁽¹⁾⁽³⁾⁽⁴⁾⁽¹¹⁾	87,120 (2 acres)	200	35	30	35
Residence D ⁽¹⁾⁽¹¹⁾	87,120 (2 acres)	250	35	30	35
Residence E ⁽²⁾	40,000	150	35	20	35
Limited Business ⁽¹³⁾	15,000	80	35 ⁽¹²⁾	10	35
General Business ⁽¹³⁾	15,000	100	35 ⁽⁷⁾⁽¹²⁾	10 ⁽⁸⁾	35

Dimensional Requirements Table					
District	Minimum Lot Size (square feet) ⁽⁹⁾	Minimum Lot Frontage (feet)	Minimum Front Yard Setback (feet)	Minimum Side and Rear Setback ⁽¹⁰⁾ (feet)	Maximum Building Height (feet)
Marine Business ⁽¹³⁾	15,000	100	35 ⁽¹²⁾	10	35
Limited Industrial ⁽¹³⁾	15,000	100	35 ⁽¹²⁾	10	35
Campus Office Park	160,000⁽⁵⁾				35
Surface Water⁽⁶⁾					
Open Space Development					

NOTES:

- These dimensional requirements may be waived in accordance with the provisions of Article X, Conservation Subdivision, upon the issuance of a special permit to Residence A.
- See § 230-5.3 for additional and special requirements for the Residence E, Multifamily Residence District.
- ~~See Article XII for Open Space Development District requirements. Dimensional requirements will be established by action of the Town Meeting in designating an Open Space Development District.~~
- These dimensional requirements may be waived in accordance with the provisions of § 230-5.5, Waterfront compounds. [Amended 4-24-2000 ATM by Art. 26]
- ~~See § 230-5.4 for additional and special requirements for Campus Office Park District. (Reserved)~~
- ~~See § 230-8.5 for requirements applying to Surface Water District. (Reserved)~~
- Not less than 25% of the required front yard must be maintained with vegetative cover.
- Where a business use abuts a residential district, a landscape buffer five feet in width shall be provided along abutting side or rear lot lines unless otherwise specified under site plan review and approval.
- The required contiguous upland area is calculated by multiplying the percentage (%) shown in the table by the minimum required lot size for each zoning district. In computing the minimum lot area, land area as defined in the Massachusetts Wetland Regulations (310 CMR 10.00) as bordering vegetated wetlands, land under water bodies or waterways, salt marshes, or all land seaward of mean high water shall not be used in computing the minimum lot area requirements, as based on the following tables:

<u>Lots serviced by both on-site sewage disposal system and private well</u>			
Zone	Area (square feet)	Percent Contiguous Uplands Area Required to Compute Lot Size	
RA	15,000	100%	
RB	30,000	100%	
RC	60,000	80%	
RD	80,000	60%	

Lots serviced by Town water and on-site sewage disposal systems			
Zone	Area (square feet)	Percent Contiguous Uplands Area Required to Compute Lot Size	
RA	15,000	100%	
RB	30,000	80%	

Town of Marion Final Draft (Red-Line)

	RC	60,000	70%	
	RD	80,000	60%	

	Lots serviced by both Town water and Town sewer			
	Zone	Area <u>(square feet)</u>	Percent Contiguous Uplands Area Required to Compute Lot Size	
	RA	15,000	90%	
	RB	30,000	70%	
	RC	60,000	60%	
	RD	80,000	50%	

(This provision shall only apply to lots created on plans filed after March 6,1995.)

10. The rear yard setback requirements may be waived for piers where a pier is constructed in a nonresidential district or where a pier is allowed by special permit in a residential district.

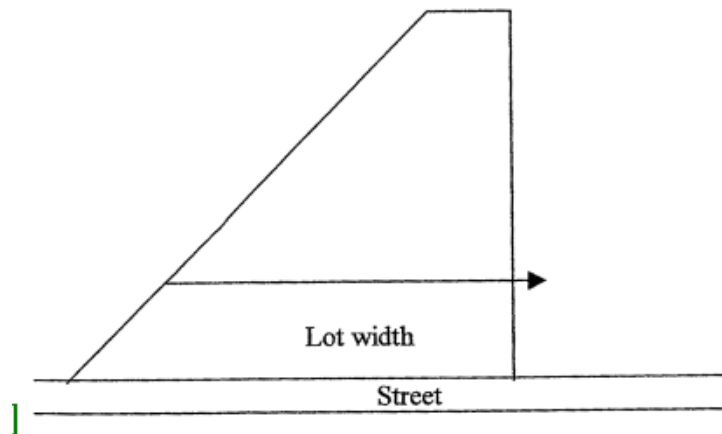
11. Provided, however, that the Planning Board may grant a special permit to allow a minimum lot frontage on a common private way shown on an enclosed residential compound plan pursuant to the Subdivision Rules and Regulations of the Planning Board. In issuing any special permit for reduced frontage in a residential compound, the Planning Board shall require the applicant to demonstrate that, through easements, restrictive covenants or other appropriate legal devices, the maintenance, repair, snow removal and liability for the common driveway within the residential compound shall remain perpetually the responsibility of the private parties, or their successors-in-interest, and that any breach of this condition shall be deemed noncompliant with the terms of any special permit issued hereunder. Any subsequent change to the roadway surface after the construction of a residential compound shall require a modification of the endorsed plan pursuant to MGL c. 41, § 81W and this special permit.

12. Provided, however, that the Planning Board may grant a special permit to allow a lesser setback. In issuing any special permit for reduced setbacks, the Planning Board shall require the applicant to provide parking, curbing, street trees, or other plantings, and pedestrian access in a manner acceptable to the Planning Board. Through easements, restrictive covenants or other appropriate legal devices, the maintenance, repair, snow removal and liability for the sidewalk and street trees or other plantings on the property of the business shall remain the responsibility of the owner of said property.

13. Provided, however, that the Planning Board may grant a special permit to allow a use, other than a one- or two-family dwelling, as allowed by the Table of Principal Use Regulations on parcels equal to or greater than 5,000 square feet and with a minimum of 50 feet of frontage, provided that the project is otherwise in harmony with the provision of the Zoning Bylaw and the lot was in compliance with the applicable zoning at the time the lot was created or shown on a plan endorsed by the Planning Board.

- A. The height of a building abutting a street shall be measured from the average finished grade on the street side(s) and, if not abutting a street from the mean ground level along its front to the highest point of the exterior in the case of a flat roof or to the ridge in the case of a pitched roof.
- B. Front, side and rear yard setbacks shall be measured from the nearest point of any structure or dwelling to each front, side or rear lot line. Uncovered steps, ramps, and bulkheads or the construction of ~~wall~~walls or fences not exceeding six feet in height shall not be considered part of the structure for the purposes of measuring setbacks. A chimney and all types of decks shall be considered part of a structure.

- C. A detached accessory building shall conform to the minimum setback ~~and set in~~ from any boundary. Any building attached to a dwelling will be considered as part of the dwelling.
- D. All buildings on lots abutting Route 6 (Mill Street and Wareham Street) shall be set back at least 50 feet from said right-of-way. No building, except on lots on Route 6, need to be set back more than the average of the setback of the building next thereto (within 250 feet) on either side. A vacant lot, or lot occupied by a building set back more than the minimum setback requirements, shall be counted as though occupied by a building set back at this requirement.
- E. Frontage for the width of a lot shall ~~be~~ measured continuously along one street line between side lot lines, provided that the shape of the lot is capable of containing a rectangle with a width of at least 75 feet at the front of the property line and with ~~sufficient length length significant~~ that the area of the rectangle contains no less than 50% of the minimum lot size requirement.
- F. Each lot shall have a width of not less than 80% of the required frontage at all points between the sideline of the right-of-way along which the frontage of the lot is measured and the nearest point on the front wall of the dwelling upon such lot. Such width shall be measured along lines which are parallel to such sideline.



- G. The thinnest cross section of a lot must be greater than 70 feet as determined from the length of a line segment running parallel to the front lot line. Rear lot access is exempt from this requirement.
- H. On a corner lot, the frontage requirement shall be measured to the midpoint of the curve forming the intersecting streets. On a corner lot, an accessory use, including a visual screen, must comply with the setback requirements relating to both streets.
- I. An exception to the minimum lot frontage requirements may be allowed in any residence district in the case of a single rear lot which has insufficient frontage on an existing road or way by granting of approval pursuant to the procedures and standards established in § 230-8.4 of this bylaw.
- J. The limitations of height in feet shall not apply to chimneys, ventilators, skylights, water tanks, bulkheads, and other accessory features usually carried above roofs, nor domes, towers, or spires of churches or other buildings, provided such features are in no way used for living purposes, and further

provided that no structural feature of any building shall exceed a height of 65 feet from the ground except by special permit from the Board of Appeals.

- K. A detached accessory building shall conform to the minimum setback requirements of the lot on which it is located ~~and set in from any boundary~~ except where a dwelling exists on lots which are less than minimum requirements, in which case the Board of Appeals may by special permit authorize such reductions of setback ~~and set in~~ requirements as may be reasonable with respect to the size and shape of the lot and not hazardous or detrimental to the neighborhood and the adjacent ~~facilities~~ lots.
- L. Nothing in this section shall be construed to exempt wireless communications facilities from this bylaw. See § 230-8.10.

§ 230-5.2. Exceptions to minimum lot requirements. [Amended 4-25-1994 ATM by Art. 25]

- A. On any lot which is less than the minimum lot size or frontage set forth in § 230-5.1, but which is allowed by MGL c. 40A, § 6 to be built upon, coverage of the lot by the dwellinghouse, accessory buildings and other impervious-type surfaces or structures may not exceed 40% of ground area. [Amended 4-22-1996 ATM by Art. 26]
- B. If any existing lot contains more than one dwelling and the division of such lot would result in one or both lots containing less than the minimum requirements in said districts, said lot may be divided with each lot having one dwelling and equal square footage and equal frontage. Appeal from this restriction may be made to the Zoning Board of Appeals, which may grant a special permit if equal division creates a true hardship. This provision shall not apply when an accessory building has been converted to an apartment under a special permit.
- C. One single-family dwelling may be constructed on any lot or combination of adjoining lots, provided that said lots were held in common ownership with that of an adjoining lot(s) that contains at least 5,000 square feet of area and 50 feet of frontage on a way, provided that:
 - (1) The lot or combined lots are located in a residential zoning district;
 - (2) The lots are shown on a plan of land as ~~a~~ separate and identifiable lots of record on a plan or deed duly recorded on the Plymouth County Registry of Deeds or in the Land Court prior to January 1, 1996, and in compliance with the Zoning Bylaw at the time of creation.
 - (3) The lots will accommodate a residential dwelling that, when constructed, will comply with side and rear setbacks of the Zoning Bylaw as follows:
 - (a) RA: 10 feet.
 - (b) RB: 15 feet.
 - (c) RC: 20 feet.
 - (d) RD: 20 feet.

Said residential districts as shown on the current Zoning Map of the Town of Marion, Massachusetts ~~Zoning Map of the Town of Marion, Massachusetts, February 1974, final revision date July 1999.~~

- (4) All lots will comply with the front setback requirements under the Zoning Bylaw in effect at the time the lot was created. [Added 10-25-2004 STM by Art. S15]

§ 230-5.3. Multifamily residences. [Added 4-4-1989 STM by Art. 6]

A. Purpose.

- (1) Regulations covering multifamily housing are enacted to encourage a limited amount of rental or ownership housing in Marion at a relatively low density to facilitate affordable housing and construction needs. Such housing must be served by public sewer and water. In keeping with the community's desire to maintain Marion as a place where single-family detached homes predominate, these regulations will apply only when the Marion Town Meeting decides to designate an area or areas as Residence E, Multifamily Residence.
- (2) The intent of these regulations is to encourage low-density multifamily housing designed to be compatible with the neighborhood in which it may be located. Pursuant to Article IX, Site Plan Review and Approval, all development exceeding a minimum threshold will be required to obtain site plan approval.

B. Dimensional requirements.

- (1) Maximum lot coverage: 40%, the same to include the gross ground floor area of all buildings and all parking areas.
- (2) Minimum usable open space. There shall be provided for each lot or building site area a minimum usable open space of not less than 40% of ~~to~~ the lot area. Usable open space shall include all the lot area not covered by buildings, accessory buildings and/or structures, or surface parking areas. The area devoted to lawns, landscaping, walks, roadways, drives and exterior recreation areas shall be included as usable open space.

C. Density requirements. The maximum allowable density shall be 12 dwelling units per acre in areas served by public water and sewer. In determining whether the density rate has been complied with, all land in the development lot or parcel not reasonably suited for residential development, such as wetlands, shall be excluded.

§ 230-5.4. ~~Campus Office Park District. [Added 6-18-1990 STM by Art. 11] (Reserved)~~

~~A. Purpose.~~

- ~~(1) The Campus Office Park District is created to encourage the development of quality office space in a campus type setting, with substantial preservation of the natural environment.~~
- ~~(2) Pursuant to Article IX, Site Plan Review and Approval, all development exceeding a minimum threshold will be required to obtain Site Plan Approval.~~
- ~~(3) The creation of a Campus Office Park District is allowed in any district where offices and similar business are permitted, as shown in § 230-4.2, Principal uses (chart). The creation of a Campus Office Park District in Residential districts will require approval by a two-thirds vote of the Marion Town Meeting.~~

~~B. Dimensional requirements.~~

- ~~(1) Minimum lot frontage in feet: 50 feet on a private interior street constructed as part of a Campus Office Park Development or 200 feet on an existing public way.~~
- ~~(2) Minimum front yard setback in feet: 20 feet from the sidelines of private streets within a Campus Office Park Development, 100 feet from existing public ways. No parking may be placed within the minimum front yard.~~
- ~~(3) Minimum side and rear yard setback in feet: 20 feet from property lines of other parcels within a Campus Office Park Development; 50 feet from property lines of parcels within a Campus~~

~~Office Park Development; 50 feet from property lines of parcels outside the Campus Office Park District, all of which must be used as a buffer area. No building or parking may be placed within the minimum side or rear yard except when joint parking areas are allowed by the Planning Board through Site Plan Review.~~

- ~~(4) Maximum lot coverage: 35%, the same to include the gross ground floor area of all buildings and all paved areas.~~

§ 230-5.5. Waterfront compounds. [Added 10-28-1997 STM by Art. S4; amended 4-29-2003 STM by Art. S8]

- A. Purpose. Marion has a number of estate properties located along the waterfront, where large homes on large tracts of land, often along with several smaller homes on the same tract or in separate parcel ownership, have evolved as residential compounds served by a common, private access road. A number of the large homes, which were built for seasonal use originally, have been converted to year-round occupancy. It is the intent of this section to preserve the estate and open space characteristics of large tracts of land along the waterfront, including parcels in more than one ownership, in a manner which ~~minimized~~minimizes Town maintenance responsibility.
- B. Applicability. On tracts of 10 acres or more abutting tidal waters, a waterfront compound comprised of dwelling units sharing common frontage and a private access road or roads, may be permitted, through the issuance of a special permit by the Planning Board, in any single-family residential district.
- C. Conditions. A waterfront compound shall meet all of the following conditions:
- (1) Tract ownership. For the purposes of making an application under this section, the minimum tract size may be comprised of parcels in more than one ownership, providing evidence of legal arrangements binding all property owners to the restrictions which may be imposed in the granting of a special permit are presented with an application for a special permit.
 - (2) Tract frontage. The tract shall have a minimum frontage on a public way equal to at least twice the minimum frontage required in the residential district in which it is located, unless an island surrounded by water.
 - (3) Maximum number of dwelling units. The waterfront compound shall not contain more than one dwelling unit per two acres of land. Conversion of larger estate residences to more than one dwelling unit is permitted in a waterfront compound.
 - (4) Dimensional requirements. There shall be no minimum lot width or frontage requirements in a waterfront compound. On all lots which abut the peripheral boundary of the tract, the setback requirements from the peripheral boundary shall be the same as those which would be required for the residential district in which the land is located.
 - (5) Access. Each dwelling unit in the waterfront compound shall have adequate and legally enforceable rights of access to a public street via a private street or driveway or public waterway in case of an island surrounded by water.
- D. Open space requirements. A minimum of 10% of the tract shall be contiguous open space, excluding required yards and buffer areas. Such open space may be separated by the road(s) constructed within the waterfront compound. The percentage of the open space which is wetlands, as defined pursuant to MGL c. 131, § 40, shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in the open space upon a demonstration that such inclusion promotes the purposes set forth above.

- (1) The required open space shall be used for conservation, outdoor recreational facilities of a noncommercial nature, agriculture, preservation of scenic resources and structures accessory to any of the above uses (including swimming pools, tennis courts, stables and greenhouses), and shall be served by suitable access for such purposes.
 - (2) Underground utilities to serve the waterfront compound may be located within the required open space.
 - (3) The required open space shall, at the owner's election, be conveyed to:
 - (a) The Town of Marion or its Conservation Commission;
 - (b) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
 - (c) A corporation or trust ~~ownerowned~~ jointly or in common by the owners of lots within the waterfront compound. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust, which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town of Marion to perform maintenance of the open space and facilities; if the trust or corporation fails to provide adequate maintenance and shall grant the Town an easement for this purpose. In such event, the Town shall first provide 14 days' written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the Town may perform it. The owner of each lot shall be deemed to have assented to the Town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the Town of same. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval and shall thereafter be recorded in the Registry of Deeds.
 - (4) Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable to the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved exclusively for the purposes set forth in Subsection D(1) above ~~agricultural, horticultural, educational or recreational purposes~~ and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.
 - (5) All deed restrictions with respect to ownership, use and maintenance of permanent open space shall be referenced on and recorded with the plan.
- E. Limitation on further subdivision. No waterfront compound for which a special permit has been issued under this section may be further subdivided and a notation to this effect shall be shown on the plan.
- F. Decision. A special permit may be granted under this section by the Planning Board, provided:
- (1) Adequate provision has been made for the disposal of sewage generated by the development in accordance with the requirements of the Board of Health;
 - (2) Due consideration has been given to the reports of the Board of Health and the Conservation Commission;

- G. Additional conditions. Any special permit authorizing a waterfront compound shall require that individual deeds for lots or dwelling units within the compound contain the following terms:
- (1) The land lies within an approved waterfront compound conservation area;
 - (2) The development of the land is permitted only in accordance with the land uses indicated in the Planning Board's special permit decision;
 - (3) The Town will not be requested to accept or maintain the private access, drainage, open space (except as may be determined during the course of site plan review) or other improvements within the waterfront compound.
- H. Relation to other requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw.

§ 230-5.6. Special permit and local initiative program dwelling units. [Added 10-25-2004 STM by Art. S22]

- A. Purpose. The purpose of this section is to allow, upon receipt of both a special permit and approval from the Board of Selectmen, pursuant to 760 CMR 45.00 (Local Initiative Program), the development of a lot that has lot vested rights under the Zoning Act and/or the Marion Zoning Bylaw.
- B. The Board of Selectmen may grant a special permit to build one single-family dwelling on any lot or combination of existing adjoining lots, provided:
- (1) The Board of Selectmen ~~vote~~votes to endorse the application pursuant to the Selectmen's authority contained within 760 CMR 45.00 and ~~grant~~grants a special permit pursuant to § 230-7.2 of the Zoning Bylaw;
 - (2) Said existing lot or lots were held in common ownership with that of adjoining land, which, when combined with any other land, contains at least 5,000 square feet of area and 50 feet of frontage on a street, as defined in the Zoning Bylaw;
 - (3) The lot or combined lots are located in a zoning district where residential use is permitted;
 - (4) The lot(s) are each shown on a plan of land as a separate and identifiable lots of record on a plan or deed duly recorded in the Plymouth County Registry of Deeds or in the Land Court prior to January 1, 1996; and
 - (5) The lot(s) is subject to a deed restriction and regulatory agreement limiting, for a period of no less than 99 years, the sale or rental of the dwelling unit to a qualified individual pursuant to guidelines established by the Planning Board, said guidelines to be consistent with the purpose and intent of 760 CMR 45.00 and MGL c. 40B, §§ 20 to 23 and is approved by the Board of Selectmen, or its designee.

§ 230-5.7. Open space in General Business, Marine Business and Limited Industrial Districts.

In General Business, Marine Business and Limited Industrial Districts, it is desirable that a portion of each lot be left in an unpaved, unbuilt-upon condition, after allowing for the parking space required by § 230-6.5, with a goal of a minimum of 20% of the lot area in this open condition.

**ARTICLE VI
General Provisions**

§ 230-6.1. Nonconforming uses and structures. [Amended 10-25-1999 STM, by Art. S4]

- A. Applicability. No provision of this Zoning Bylaw shall apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by MGL c. 40A, § 5. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.
- B. Nonconforming uses. The Board of Appeals ~~may~~shall award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension may not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:
- (1) Change or substantial extension of the use;
 - (2) Change from one nonconforming use to another, less detrimental, nonconforming use.
- C. Nonconforming structures. The Board of Appeals may award a special permit to reconstruct, extend, alter or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:
- (1) Reconstructed, extended or structurally changed;
 - (2) Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.
- D. Variance required. Except as provided below in Subsection E, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance by the Board of Appeals.
- E. Nonconforming single- and two-family structures.
- (1) Nonconforming single- and two-family residential structures may be reconstructed, extended, altered or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following types of changes shall be deemed not to increase the nonconforming nature of said structure; provided, however, that, in no case, shall the alteration to the nonconforming structure result in (a) a structure no more than the lesser of the maximum height allowable under these bylaws, or a ~~40%~~ten-percent increase in existing height, or (b) a structure closer to the side or rear lot lines than 10 feet in ~~Resident~~Residence A, 15 feet in ~~Resident~~Residence B, 20 feet in Residence C or 20 feet in ~~Resident~~Residence D; said residential districts as shown on the ~~current~~ Zoning Map of the Town of Marion, Massachusetts, ~~February, 1984, final revision date July, 1999:~~
 - (a) Alteration to a structure located on a lot with insufficient area, where such alteration complies with all current setback, yard, building coverage, and building height requirements.
 - (b) Alteration to a structure located on a lot with insufficient frontage, where such alteration complies with all current setback, yard, building coverage, and building height requirements.

- (c) Alteration to a structure encroaching upon one or more required yard or setback areas, where such alteration will comply with all current setback, yard, building coverage and building height requirements.
- (2) In any other case, the Building Commissioner shall refer the matter to the Board of Appeals. The Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. [Amended 4-29-2003 STM by Art. S2]
- F. Abandonment or non-use. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Zoning Bylaw.
- G. Catastrophe or demolition. Any nonconforming structure may be reconstructed after a fire, explosion or other catastrophe or after demolition, provided that such reconstruction is completed within 24 months after such catastrophe or demolition, and provided that the building(s) as reconstructed shall be located on the footprint of the nonconforming structure and rebuilt to an extent only as great in volume or area as the original nonconforming structure unless a larger volume or area or different footprint is authorized by special permit from the Board of Appeals. The Board of Appeals may extend by 12 months the period of completion. [Amended 10-15-2001 STM by Art. S11]
- H. Reversion to nonconformity. No nonconforming use shall, if changed to a conforming use, revert back to a nonconforming use.

§ 230-6.2. Signs.

It is the intention of these sign regulations to promote public safety, protect property values, create an attractive business climate and enhance the physical appearance of the community.

- A. General requirements/procedures.
 - (1) Illumination. Any illuminated sign or lighting device shall employ only lights emitting a constant light source.
 - (2) Maintenance. All signs, together with their supports, braces, guys and other anchors, shall be kept in good repair and in safe condition. The owner and the lessee, if any, of the premises on which the sign is erected, shall be directly responsible for keeping such sign and the area around it in a neat, clean and safe condition.
 - (3) Design limitations:
 - (a) ~~Freestanding~~The bottom of freestanding or projecting signs shall be no closer than eight feet ~~from~~to the ground where people walk and 15 feet to surfaces where vehicles may drive.
 - (b) The top of every sign shall be no higher than 18 feet from the ground or, if mounted on a building or roof, no higher than the highest point of the roof (such as the ridge line) or parapet—, whichever is the higher.
 - (c) Any sign attached to a building shall project no more than five feet from the building.
 - (d) Any freestanding sign shall have a support structure which is of sufficient strength and which is securely attached to a foundation or the ground so that the sign and its support create no danger to life or limb.

- B. Signs in residential districts. There shall be no advertising signs in any residential district, except for:
- (1) Real estate "for sale" and "for rent" signs and related directional signs.
 - (2) Accessory use signs as provided in Subsection C of this section.
 - (3) Signs for nonconforming businesses that are located in residential districts. These signs shall carry the same restrictions as signs in the Limited Business District- (Subsection D).
 - (4) Signs for proposed subdivision projects. These signs shall include the name of the developer, the size and scope of the proposed subdivision, as well as the date of the definitive subdivision hearing. The sign shall have an aggregate area of 48 square feet and shall be located on the subdivision's proposed access front. [Added 4-28-1997 ATM by Art. 34]
- C. Residential accessory use signs. Signs for residential accessory uses may be permitted as follows:
- (1) No more than one sign is allowed.
 - (2) No sign shall be larger than two square feet of surface per side.
 - (3) No illumination shall be greater than a 175 watt incandescent bulb, or equivalent, per side.
 - (4) No illumination shall be directed anywhere but on the sign face, and the illumination source shall be suitably concealed by a reflecting shield.
- D. Signs permitted in General Business (GB), Marine Business (MB), Limited Industrial ~~Districts~~ (LIDLI), and Limited Business Districts (LBDLB).
- (1) Each business or industrial establishment may display at each of its locations a total of two signs selected from the following:
 - (a) One wall- or roof-mounted sign having an aggregate face area of not more than 24 square feet in the GB, MB and LIDLI and not more than 12 square feet in the LBDLB.
 - (b) One projecting double-faced sign, each face having an aggregate face area of not more than 12 square feet in the GB, MB, LIDLI and LBDLB.
 - (c) One freestanding double-faced sign, each face having an aggregate face area of not more than 12 square feet in the GB, MB, LIDLI and LBDLB.
 - (d) If a business faces and operates with more than one geographic front for public access, it may have any two of the above signs on one public access geographic front and any one of the above on its other public access ~~fronts~~front.
 - (e) If a business is required to display a brand name, an ~~un-illuminated~~unilluminated wall-mounted sign showing the brand name and not exceeding four square feet may be displayed in addition to the signs allowed in Subsection D(1)(a), (b) and (c) above. A maximum of two brand name signs is allowed.
 - (2) Where more than one business is located in a building or buildings on the same lot or contiguous lots, owned and operated as a unit, one freestanding sign for each main building, not exceeding 25 square feet of face area per side in the GB, MB and LIDLI and 15 square feet of face area per side in the LBDLB, may be provided in lieu of the individual business freestanding sign allowed in Subsection D(1)(c) and in addition to either the wall- or roof-mounted or projecting sign for each business allowed in Subsection D(1)(a) or (b) above.

- (3) Non-advertising signs necessary to the conduct of business and signs for the necessary information and safety of customers and the public.
 - (4) Temporary banners across a street or on a building, or any other temporary sign, may be displayed for a maximum of 15 days per event or activity when such sign is used to inform the public of an activity or event sponsored by any government agency or civic, charitable, religious, patriotic, fraternal or nonprofit organization.
 - (5) Real estate "for sale" and "for rent" signs and off-~~premise~~premises related directional signs.
 - (6) Signs associated with an approved stand for farm produce not exceeding 12 square feet in total area.
- E. Signs for gasoline filling and service stations and marine fuel stations. The following signs, customary and necessary to the operation of filling and service stations, are permitted:
- (1) All signs required by federal, state and municipal laws and regulations.
 - (2) A credit card sign not to exceed two square feet in area, affixed to the building, or the gasoline pumps or permanent sign structure ~~or~~for non-advertising signs necessary to the conduct of business and signs for the necessary information and safety of customers and the public.
 - (3) One sign bearing the brand name or the trade name of the station, of a design specified by the vendor, permanently affixed to the building or its own metal substructure, said sign not to exceed 25 square feet in area in the GB, MB, and ~~LBDLI~~ and 15 square feet in the ~~LBDLB~~.
- F. Signs allowed by special permit (See § 230-7.4.). The Zoning Board of Appeals, in evaluating requests for special permits for signs not permitted in Article VI, shall weigh equally the community's concern that commercial signage be minimized and the right of businesses to advertise and that departure from the limitations of Article VI shall not ordinarily be granted without a clear showing of business hardship. The following signs may be allowed by special permit:
- (1) Off-property directional or advertising signs other than those permitted in Subsection B.
 - (2) More than the number of signs allowed on a property as allowed in Subsection D.
 - (3) Signs larger than the permitted size.
 - (4) Community service signs that seek to inform the community of upcoming events are permitted, provided that no such sign shall be permitted which would habitually be detrimental or offensive or tend to reduce property values in the immediate neighborhood. Signs shall remain for no longer than 45 days. Such period may be extended for an additional forty-five-day period by the special permit granting authority upon the written request of the applicant. [Added 4-28-1997 ATM by Art. 34]
- G. Prohibited signs. The below-~~l~~isted signs and conditions are prohibited in all districts, unless specifically allowed in other sections of this bylaw:
- (1) Signs simulating those signs normally erected by various governmental agencies for the protection of public health or safety.
 - (2) Signs which interfere with the free and clear vision of any street or driveway.
 - (3) Freestanding signs within 10 feet of any side or rear lot line, 30 feet to street corners and within 50 feet of any residential zoning boundary.
 - (4) Signs or advertising devices, including lighting, which interfere with radio or TV reception.

- (5) Illuminated signs or lighting devices that allow light beams or reflected lights to cause glow or reflections that can constitute a traffic hazard or a public nuisance.
- (6) Billboards.
- (7) Animated signs and/or flashing signs or advertising devices which create intermittent or varying light intensity, and signs with movement, including revolving signs, actuated by mechanical or electrical devices. This prohibition also applies to signs and devices located within a building, but visible on its exterior. Signs must be stationary and shall not move nor oscillate nor contain any visible moving parts.
- (8) Illumination of a wall, roof or gable for purposes of advertising (Temporary holiday decorations are excluded from this prohibition.).
- (9) Portable or mobile type signs, including sandwich-type and cardboard signs.
- (10) A string of three or more banners, streamers, pennants and similar devices designed to attract attention through the use of bright colors or movement, natural or artificial.

H. ~~Severance~~Severability. If any section or part thereof this bylaw is held to be invalid, the remainder of this bylaw shall not be affected thereby.

§ 230-6.3. Accessory uses. [Amended 6-18-1990 STM by Art. 12]

Accessory uses customarily incidental to the permitted principal uses on the same premises are permitted, provided that no such use shall be permitted which would ~~habitually~~ be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of noise, dirt, excessive vibration or odor. Accessory uses are permitted only in accordance with lawfully existing principal uses. An accessory use may not, in effect, convert a principal use to a use not permitted in the zoning district in which it is located. Where a principal use is permitted under special permit, its accessory use is also subject to the special permit. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in § 230-9.1, such addition shall also require site plan review and approval.

§ 230-6.4. Home occupations.

- A. The use of up to 25% of the floor space in a dwelling for customary home occupations conducted by a resident occupant, such as dressmaking, candy making, or for the practice, by a resident, of a recognized profession or craft, is a permitted activity. ~~Special~~A special permit is required in the Limited Industrial Zone.
- B. Also permitted is the use of up to 2,000 square feet of a lot, including an accessory building thereon, in connection with his trade by a resident carpenter, electrician, painter, plumber, or any other artisan, provided that no manufacturing or business use requiring substantially continuous employment be carried on.
- C. Farm, market garden, nursery or greenhouse and the sale of products, the major portion of which are grown on the premises, is a permitted activity of a resident occupant.

§ 230-6.5. Off-street parking and loading. [Amended 4-23-1985 ATM by Art. 20; 4-22-1996 ATM by Art. 28; 3-10-1997 STM by Art. S15; 4-28-1997 ATM by Art. 33]

Parking facilities off the street right-of-way shall be provided on the premises for all new residential and new or changed nonresidential uses. The number of spaces to be provided shall be as set forth in the Table

of Parking Requirements, unless the proponent elects to provide more parking spaces than ~~is~~are otherwise required.

- A. Reduction of parking requirement by special permit. Notwithstanding the provisions of § 230-6.5, the Planning Board may, by special permit, reduce the number of parking spaces required for nonresidential uses upon its determination that the intended use of the premises can be adequately served by fewer spaces. The Planning Board may consider on-~~street~~ parking available near the premises as a factor in making this determination.
- B. Off-street parking in the Limited Business District. Notwithstanding the provisions of § 230-6.5, uses located within the Limited Business District need only supply 70% of the parking requirement set forth in the Table of Parking Requirements.
- C. Table of Parking Requirements. Parking shall be provided in accordance with the following schedule:

Principal Use	Minimum Number of Parking Spaces
General retail	1 per 200 square feet of gross floor area
Retail sales accessory to industrial use (less than 2,000 square feet of retail space)	1 per 500 square feet of gross floor area devoted to retail sales
Boat sales and service	1 per 5,000 square feet of indoor or outdoor area devoted to display, sales, service or storage
Printing and publishing	1 per 500 square feet of gross floor area
Medical office	1 per 150 square feet of gross floor area for medical and dental offices
General office	1 per 250 square feet of gross floor area
Restaurant	1 per 2 seats, plus 1 per 2 employees
Research and development, manufacturing or industrial	1 per 500 square feet of gross floor area or 1 per employee, whichever is greater
Warehousing and storage	1 per 2 employees, but not less than 1 space per 5,000 square feet of area devoted to indoor or outdoor storage
Inn and bed-and-breakfast	1 per sleeping room, plus 1 per 2 employees
School or daycare <u>day-care</u> facility	1 per 4 occupants, plus 1 per 2 employees
Church, library, museum or similar place of assembly	1 per 8 occupants, plus 1 per 2 employees
Bank	1 per 175 square feet of gross floor <u>area</u>
Home occupation	1 per room used for office, plus 1 per nonresident employee (in addition to parking spaces for the principal residential use)
Gasoline <u>Motor vehicle</u> service station	2 per service bay, plus 1 per employee
Residential <u>Dwelling</u> unit	2 spaces per residential <u>dwelling</u> unit
Rooming house	2 spaces , plus 1 space per rental room

Any computation resulting in a fraction of a space shall be rounded to the next highest whole number.

D. Parking lot design.

- (1) Required parking areas shall not be located forward of any building front line on the lot, or on an adjacent lot;
- (2) Parking spaces shall be at least nine feet by 18 feet; [Amended 4-22-1996 ATM by Art. 28]
- (3) In parking areas with eight or more spaces, individual spaces shall be delineated by painted lines, wheel stops or other means;
- (4) For parking areas of 15 or more spaces, bicycle racks facilitating locking shall be provided to accommodate one bicycle per three parking spaces or fraction thereof. Such bicycle rack(s) may be located within the parking area or in another suitable location as deemed appropriate by the Planning Board.
- (5) Parking lot aisles shall be designed in conformance with the following:

Parking Angle	Minimum Aisle Width (feet)	
	One-Way Traffic (feet)	Two-Way Traffic (feet)
0° (parallel)	12	20
30°	13	20
45°	14	21
60°	18	23
90°	24	24

- (6) All artificial lighting shall be arranged and shielded so as to prevent direct glare from the light source onto any public way or any other property. All parking facilities which are used at night shall be lighted as evenly as possible within the wattage limits established by the State Building Code. All light shall be confined to the site and shall comply with the dark skies provisions set forth in § 230-9.11, Site plan details. [Amended 5-21-2007 ATM by Art. 24]
- (7) Access driveways to nonresidential premises shall be 10 feet wide for one-way traffic and 18 feet wide for two-way traffic. Driveways shall not exceed 24 feet in width; provided, however, that driveways serving two-way traffic may be reduced to 10 feet in width when the driveway does not exceed 50 feet in length, does not serve more than five parking spaces, and provides sufficient turnaround so as not to require backing onto a public way. [Amended 10-15-2001 STM by Art. S12]
- (8) Parking facilities shall provide specially designated parking stalls for the physically handicapped in accordance with the Rules and Regulations of the Architectural Barriers Board of the Commonwealth of Massachusetts Department of Public Safety or any agency superseding such agency. Handicapped stalls shall be clearly identified by a sign stating that such stalls are reserved for physically handicapped persons. Said stalls shall be located in that portion of the parking facility nearest the entrance to the use or structure which the parking facility serves. Adequate access for the handicapped from the parking facility to the structure shall be provided.
- (9) To the extent feasible, lots and parking areas shall be served by common private access ways, in order to minimize the number of curb cuts. Such common access ways shall be in conformance with the functional standards of the Subdivision Rules and Regulations of the Planning Board for road construction, sidewalks and drainage. Proposed documentation (in the form of easements, covenants or contracts) shall be submitted with the application,

demonstrating that proper maintenance, repair and apportionment of liability for the common access way and shared parking areas has been agreed upon by all lot owners proposing to use the common access way. Common access ways may serve any number of adjacent parcels deemed appropriate by the Planning Board.

E. Landscaping requirements for parking areas. [Amended 10-25-1999 STM by Art. S6]

- (1) Parking lots containing 10 or more spaces shall be planted with at least one tree per eight spaces, no smaller than two-inch caliper, each tree being surrounded by no less than 40 square feet of permeable unpaved area. Trees required by the provisions of this section shall be at least five feet in height at the time of planting and shall be of a species characterized by rapid growth and by suitability and hardiness for location in a parking lot. To the extent practicable, existing trees shall be retained and used to satisfy the provisions of this section.
- (2) At least 25% of the required front yard shall be maintained with vegetative cover.

§ 230-6.6. Visual screening. [Amended 4-28-1997 ATM by Art. 35]

A visual screen not less than six feet in height (a solid fence, wall or strip of densely planted trees and/or shrubs) shall be provided for each of the following:

- A. Off-street open parking areas of 10 or more ~~than 10~~ spaces or more than two trucks or other construction vehicles continually parked in or adjacent to a residential district.
- B. All exterior storage areas exceeding 400 square feet in or adjacent to a residential district.
- C. All exterior service areas of a business or industrial use.

§ 230-6.7. Mobile homes and trailers.

A trailer or mobile home is any vehicle basically designed for human habitation and for ~~the~~ occasional or frequent mobile use, whether on wheels or rigid supports.

- A. ~~Accessory use.~~ A mobile home or trailer may be parked ~~on~~ stored on a lot occupied by the owners if located within a garage or an accessory building, or if located at least 25 feet from any property line in the rear half of the lot. Use and occupancy for living or business ~~is prohibited~~ purposes is prohibited, except as permitted by MGL c. 40A, § 3 to accommodate an owner or occupier whose residence has been destroyed by fire or other natural causes while the residence is being rebuilt.
- B. Temporary use. Temporary occupancy of a trailer or mobile home by a ~~non-paying~~ nonpaying guest of the owner or occupant of the land may be permitted by the Board of Selectmen for a period not to exceed two weeks in any calendar year and an additional two ~~weeks~~ week permit may be granted by the Board of Selectmen. Temporary use and occupancy of a mobile home as an office or dwelling incidental to construction on the site may be authorized by special permit, which must be approved and signed by the Board of Health for a term not to exceed two years.

§ 230-6.8. Commercial utilities. [Added 10-15-2001 STM by Art. S10]

All utilities for new commercial site development shall be installed underground and shall meet standards set by the utility companies to the extent permitted under any other applicable state or local law or regulation.

ARTICLE VII
Uses by Special Permit

§ 230-7.1. Special permit granting authority (SPGA).

- A. The Board of Appeals or such other board designated a special permit granting authority shall hear and decide upon the applications for the specific special permits authorized by this bylaw.
- B. Distribution and review of special permit applications. [Added 4-4-1989 STM by Art. 10]
 - (1) Within five days after receipt of an application for special permit, the special permit granting authority shall transmit copies thereof, together with copies of the accompanying plans, to the Planning Board (when it is not the special permit granting authority), the Conservation Commission, the Board of Selectmen (when it is not the special permit granting authority), the Board of Health and such other municipal boards or agencies as the special permit granting authority may designate by rule or regulation. All such boards shall investigate the application and report in writing their recommendations to the issuing special permit granting authority.
 - (2) The special permit granting authority shall not take final action on such application until it has received a report thereon from any of the boards listed above or until said boards have allowed 21 days to elapse after the receipt of such application without submission of a report; provided, however, that the Planning Board shall have 45 days from its receipt of a site plan to render and transmit its decision to the special permit granting authority. Such period may be extended upon the written request of the applicant, and, in such cases, the special permit granting authority shall request of the applicant a corresponding extension of time for its final action.

§ 230-7.2. General requirements. [Amended 11-19-1985 STM by Art. 8; 3-10-1997 STM by Art. S14]

- A. Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this bylaw, the determination shall include consideration of each of the following:
 - (1) Social, economic or community needs which are served by the proposal;
 - (2) Traffic flow and safety, including parking and loading;
 - (3) Adequacy of utilities and other public services;
 - (4) Neighborhood character and social structures;
 - (5) Impacts on the natural environment; and
 - (6) Potential fiscal impact, including impact on Town services, tax base, and employment.
- B. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use as the special permit granting authority may deem necessary to serve the purposes of this bylaw. Special permits shall lapse 2436 months following final action (plus such time required to pursue or await the determination of an appeal referred to MGL c. 40A, § 17, from the grant thereof) if a substantial use thereof has not commenced nor construction begun, except for good cause.

§ 230-7.3. Public hearings.

- A. A special permit granting authority shall grant special permits only after public hearings held in conformity with the provisions of Chapter 40A of the General Laws, including due notice to parties in interest, the petitioner, abutters, owners of land directly opposite on any public or private street or

way, and abutters to the abutters within 300 feet of the property line of the petitioner, as shown on the most recent applicable tax list (including any such owner of property in another city or town), the Planning Board of the Town of Marion, and the Planning Boards of the Towns of Mattapoissett, Rochester and Wareham.

- B. The procedure for the issuance of special permits, including applications, notices, public hearing, ~~referral to the Planning Board and other Town bodies,~~ filing of decisions and other procedural requirements, shall be as provided in Chapter 40A of the General Laws and in the rules to be adopted by the special permit granting authority and filed with the Town Clerk in accordance with said Chapter 40A.

§ 230-7.4. Uses authorized by special permit. [Amended 11-19-1985 STM by Arts. 8, 9; 3-28-1989 STM by Art. 5; 4-22-1991 ATM by Art. 18; 4-22-1996 ATM by Art. 27; 3-10-1997 STM by Art. S14; 11-13-2000 STM by Art. S7; 10-15-2001 STM by Art. S13; 4-22-2002 ATM by Art. 21]

Where eligible for consideration in the Table of Principal Uses, applications for the following types of special permits shall be governed by these rules:

A. Bed-and-breakfast establishments.

- (1) An owner or owners of a residence may apply for a special permit for a bed-and-breakfast establishment.
- (2) The special permit granting authority (SPGA):
 - (a) Shall make a finding that the issuance of a special permit use shall not result in increased congestion or other adverse impacts which will tend to reduce neighborhood amenities or the value of surrounding properties.
 - (b) Shall make a finding that the issuance of a special permit shall not make existing wastewater systems inadequate and will cause no undue crowding on or near the site in order to provide required parking space.
 - (c) May allow up to, but no more than, three guest rooms per property.
 - (d) Shall permit that breakfast may be the only meal served in such facility and that only guests residing in the structure may be served.
 - (e) Shall require that the off-street parking ratio be one space per guest room with no less than one additional space for the owner. Parking to accommodate bed-and-breakfast clients shall not be located within the front yard between the residence and the street line except where the Board of Appeals finds that due to the considerable setback of the building from the street or other unique conditions pertaining to the lot, alternative off-street parking arrangements, such as an existing driveway, will not be detrimental to the neighborhood.
 - (f) May find that in areas where there are small lots and a need to prevent excessive paving of yard areas, one or more of the required guest parking space requirements may be satisfied by the use of curbside parking where the Board of Appeals determines that there will be no significant adverse impact on the neighborhood or any individual abutter.
 - (g) Shall require that the residence shall be managed by an owner residing on the property.
 - (h) Shall state that the special permit shall not be transferable to a subsequent owner or another property.

- (i) Shall require that guests shall register upon arrival, stating their names and current residence address. The registration form shall be kept by the owner for a period of two years and shall be made available for a representative of the Town of Marion upon one day's notice.
 - (j) Shall require that signs for bed-and-breakfast operations shall be consistent with those allowed for accessory uses in a residential district. See § 230-6.2.
 - (k) Shall require that the establishment must comply with all necessary state or local permits and licenses.²
- B. Industry and manufacturing. No special permit shall be granted for any manufacturing use which would be detrimental, offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire.³
- C. Piers as an accessory use. An accessory pier serving a single-family residence located on the same lot or an accessory pier in the Marine Business District may be approved by the Planning Board pursuant to the special permit regulations of this bylaw, provided that:
 - (1) The Planning Board gives due consideration to the recommendations of the Marine Resources Commission and Conservation Commission.
 - (2) The accessory use will not have an adverse impact on coastal ecology, recreational use of adjoining waters, or the use and enjoyment of the waterfront by adjoining property owners.
 - (3) Alternatives in the form of an association pier or public pier are not reasonably available.
 - ~~(4) — The Zoning Map does not designate the area as a no-pier construction zone. —~~
 - (4) The lot for which the permit is sought fully conforms with the current area and frontage requirements for the district in which it is located or was lawfully in existence on May 1, 1996, at which time the lot conformed with the then-current area and frontage requirements for the district in which it was located. [Amended 5-21-2012 ATM by Art. 32]
- D. Association piers. An association pier may be granted a special permit, provided that:
 - (1) Evidence is provided in the form of deed restrictions which restrict use of the pier to a defined geographical area or development. The developer shall include in the deed to the owners of individual lots within the defined areas beneficial rights to such association pier.
 - (2) There are provisions assuring the maintenance of the pier facilities by the developer until taken over by a homeowners' association.
 - (3) There are adequate provisions for assuring maintenance of the pier facilities by the homeowners' association. The Planning Board's attention is called to the requirements of § 230-8.5D, which generally would be applicable to an association maintaining a pier.
 - (4) Due consideration has been given to screening any parking areas from adjoining or nearby residences.

2. Editor's Note: Original Sec. 7.4.2, Conversion of a dwelling, which immediately followed this subsection, was repealed 4-26-2005 ATM by Art. 31.

3. Editor's Note: Original Sec. 7.4.4, Nonconforming uses, which immediately followed this subsection, was repealed 4-29-2003 STM by Art. S6.

- (5) The lot meets the minimum requirements for a single-family house lot in the district or was lawfully in existence on May 1, 1996, at which time the lot conformed with the then-current area and frontage requirements for the district in which it was located. [Amended 5-21-2012 ATM by Art. 33]
- (6) There is no clubhouse facility.
- (7) Due consideration has been given to the report and recommendations of the Marine Resources Commission and the Conservation Commission.

E. Signs.

- (1) Signs larger than permitted size. A special permit may be granted by the SPGA where a business has unusual requirements or a long name requiring a larger sign, and the granting of the special permit will not be detrimental to the character of the neighborhood or to the Town, will not be unduly distracting, by blocking visibility of traffic, or other business or scenic views.
- (2) Off-property directional signs. A special permit may be granted by the special permit granting authority where an applicant shows a special need.
- (3) More than one sign on building. A special permit may be granted by the SPGA where, due to the shape of the building, orientation of the building lot, the road location, topography of the land, or special landscape features, an additional sign would be appropriate for the business and not detrimental to the Town or neighborhood.

F. Structural features exceeding 65 feet high. The Board of Appeals may grant a special permit where certain structures exceed 65 feet in height and are not in any way for living purposes. This applies to accessory features such as chimneys, ventilators, skylights, water tanks, bulkheads, domes, towers, and spinnepires usually carried above roofs. ~~DoesIt does~~ not apply to wireless ~~communicationcommunications~~ facilities.

G. Multiple-unit rental housing. The Planning Board may grant a special permit to allow for rental housing units on the second or third floor of an existing structure lawfully in existence as of the date of adoption of this ~~section~~subsection, provided the following criteria are met: [Added 4-26-2005 ATM by Art. 32]

- (1) The structure is located in one of the following zoning districts: Limited Industrial, Limited Business, Marine Business or General Business, and the first floor shall be used for commercial purposes.
- (2) The structure was designed and principally constructed prior to 1931 or any structure constructed thereafter that can demonstrate historical significance to the Town of Marion.
- (3) The structure has a preexisting second and/or third floor that can accommodate multiple rental units.
- (4) The converted or altered structure shall conform to the historic architectural design and facade of the existing structure.
- (5) The proposed conversion or alteration of the structure will not cause an increase in the height of the existing structure by more than 15% of the existing structure.
- (6) The proposed conversion or alteration will not increase the total square footage of the interior area of the existing structure by more than 15% of the existing structure.

- (7) The proposed conversion or alteration receives site plan review and approval from the Planning Board.
- (8) The special permit shall become null and void and subject to immediate revocation if the rental units are ever converted to fee simple or interval ownership dwellings, ~~and~~.
- (9) The Planning Board may approve greater than two rental units, but shall require as a condition of said approval, that no less than 25% of the rental units approved be rented as affordable housing units in compliance with the definition of "affordable housing unit" in § 230-8.12B.

§ 230-7.5. Special permits applicable to certain uses in Limited Business District. [Added 11-19-1985 STM by Art. 8]

- A. A use designated by § 230-4.2 as subject to this § 230-7.5 or the change or expansion of such a use, or the construction of, or addition to, any structure associated with such a use, shall be permitted only upon the issuance of a ~~Special Permit by the Board of Appeals~~ special permit pursuant to this section.
- B. The Board of Appeals shall issue such a permit upon a finding that:
 - (1) The intended use or structure will not cause any of the following:
 - (a) Congestion in the streets that causes an adverse impact on vehicular traffic flow;
 - (b) Danger to public health or safety;
 - (c) Demands on the supply of public services beyond their capacity;
 - (2) The proposed structure is no higher than any building on all adjoining lots; and
 - (3) The distance between all points on the side and rear of the proposed structure and all points on the side and rear of all buildings on all adjoining lots shall be no less than 20 feet.
- C. Except as otherwise stated in this section, the provision of this § 230-7.5 shall be in addition to the requirements of any other provision of this bylaw, including the general and specific provisions of § 230-7.4 where applicable.
- ~~D. In the event the terms of the Bylaw subject a use of certain property to both this section and Section 2.5, then the provisions of this section shall apply.~~

§ 230-7.6. Additional special permit regulations. [Added 4-4-1989 STM by Art. 9; amended 4-27-1999 ATM by Art. 20]

Additional regulations of a more detailed nature in which special permits are authorized by this bylaw are included in other sections as follows:

- A. Section 230-8.2, Water Supply Protection District.
- B. Section 230-8.3, Towers, windmills, radio transmitters, etc.
- C. Section 230-8.4, Rear lots.
- D. Article X, Conservation Subdivisions.

**ARTICLE VIII
Special Provisions**

§ 230-8.1. Flood Hazard District. [Amended 12-15-1987 STM by Art. 15; 4-25-1988 ATM by Art. 26]

(See Article III.)

- A. Where state and town laws, bylaws, and regulations designed to reduce flood loss impose greater requirements or restrictions than other applicable laws, bylaws, and regulations, such flood protection regulations and land use controls shall take precedence.
- B. New construction or substantial improvements of residential structures within the special flood hazard district must have the lowest floor (including basement) elevated to or above the level of the one-hundred-year flood.
- C. New construction or substantial improvements of nonresidential ~~building~~buildings within the special flood hazard district must have the lowest floor (including basement) elevated to or above the level of the one-hundred-year flood, or, together with attendant utility and sanitary facilities, be ~~flood-
proofed~~floodproofed to meet applicable requirements up to the level of the one-hundred-year flood.
- D. The intent of this bylaw is to prevent unnecessary loss of life or injury to waterfront residents, to reduce the need for rescue efforts and to prevent destruction of property by ocean water, waves and debris landward by high wind storms.
- E. For the purpose of this bylaw, the Velocity Zone in Marion is the area defined as a Velocity Zone by the Federal Emergency Management Agency and delineated on the most recent Flood Insurance Rate Map for the Town of Marion, MA. [Amended 11-13-2000 STM by Art. S4; 4-29-2003 STM by Art. S9]
 - (1) There shall be no new residential construction of any sort on lots completely within the Marion Velocity Zone. The only exceptions are:
 - (a) Seawalls, piers, groins, wharves, weirs and similar structures are not prohibited by this section; and
 - (b) Lots created before the enactment of this bylaw whose areas lie completely within the Velocity Zone may be built upon, providing the structure(s) is located as far landward of mean high water as possible.
 - (2) In the case of lots created before the date of enactment of this bylaw and with areas both in the Velocity Zone and outside the Velocity Zone, all structures built after the enactment of this bylaw shall be located in area outside the Velocity Zone. If this area is not sufficient to allow for the required zoning setbacks, the applicant may apply for a variance to allow lesser setbacks. The only exceptions are: seawalls, piers, groins, wharves, weirs and similar structures.
 - (3) Every buildable lot created after the enactment of this bylaw shall have an adequate building area, plus the required setbacks, outside the Velocity Zone and all structures shall be placed within this area. The only ~~except ion~~exceptions are: seawalls, piers, groins, wharves, weirs and similar structures.
 - (4) The landward line of the Velocity Zone must be located on the official lot plan by a licensed surveyor and registered with the plan at the Massachusetts Registry of Deeds.
- F. Any use otherwise permitted or authorized by special permit in the district underlying the Flood Hazard District shall likewise be permitted or authorized by special permit in the Flood Hazard District subject to the special provisions of this section.

§ 230-8.2. Water Supply Protection District.

- A. District area (see Article III). [Amended 6-18-1990 STM by Art. 3]

- (1) There is hereby established within the Town an aquifer protection area which is delineated on the Zoning Map of the Town of Marion, dated May 12, 2014. [Amended 5-12-2014 ATM by Art. 39]
 - (2) Except as specifically provided otherwise, this section applies to the Water Supply and Aquifer Protection Districts hereby established. The Water Supply and Aquifer Protection Districts are superimposed on existing zoning districts. All uses, dimensional requirements, and other provisions of the bylaw applicable to such underlying districts shall remain in force and effect, except where the restrictions and requirements of the overlay district are more restrictive, the ~~later~~latter shall prevail.
 - (3) The purpose of the Water Supply and Aquifer Protection Districts is to promote the health, safety, and general welfare of the Town to protect, preserve, and maintain the existing and potential well sites and ~~ground-water~~groundwater supply and watershed areas for the public health and safety; to preserve and maintain the existing and potential ~~ground-water~~groundwater supply and ground water recharge areas within the Town for the public health and safety; to preserve and protect the streams, brooks, rills, marshes, swamps, bogs and other water bodies and watercourses in the Town; to protect the community from the detrimental use and development of land and water within the district; to preserve and protect the groundwater and water recharge areas within the Town; and to prevent blight and pollution of the environment.
- B. Permitted uses. [Amended 6-18-1990 STM by Art. 3]
- (1) Within the Aquifer Protection District the only uses allowed are as follows:
 - (a) A single-~~family~~ residence and uses accessory thereto connected to the municipal sewer prior to occupancy, providing all excavation and grading shall maintain a depth of at least four feet of clean fill above the high water table.
 - (b) A single-~~family~~ residence and uses accessory thereto located on a lot not less than one acre in area, providing all excavation and grading shall maintain a depth of at least four feet of clean fill above the high water table.
 - (2) Within the Water Supply Protection District the requirements of the underlying districts continue to apply, except that uses listed in Subsection C are prohibited and all uses other than single-~~family~~ residences and uses accessory thereto shall require a special permit pursuant to Subsection D.
- C. Prohibited uses. The following are prohibited as a ~~principle~~principal or an accessory use in a Water Supply Protection District. Where lawfully existing, such uses may be continued but not expanded, added to, or enlarged:
- (1) Outdoor storage of salt, snow-melting chemicals, pesticides, herbicides, hazardous wastes or chemicals, and materials containing or coated with such chemicals susceptible to being carried into the surface or ground waters within the Water Supply Protection District.
 - (2) Junkyards, salvage yards, open and landfill dumps, manufacture of pesticides, fertilizers, weed killers and herbicides, and commercial facilities for the storage or treatment of hazardous waste.
 - (3) Disposal of hazardous toxic materials (as defined by federal and state regulations), solid waste, or hazardous toxic wastewater through an ~~onsite~~on-site subsurface disposal system.
- D. Uses by special permit. [Amended 6-18-1990 STM by Art. 3]

- (1) All principal or accessory uses, other than those permitted in Subsection B, which are authorized in the underlying district and which are not otherwise prohibited by Subsection C, are permitted in a Water Supply Protection District upon issuance of a special permit by the Board of Selectmen, which shall consider the reports and recommendations of the Board of Health, Planning Board, and Conservation Commission.
- (2) The Board of Selectmen may waive all or part of the submission requirements upon the submission of evidence by the applicant that the surface or groundwater drainage from the applicant's site is not contributory to a municipal well field.
- (3) Submittals. The following information shall be submitted when applying for a special permit within the Water Supply Protection District:
 - (a) A complete list of all chemicals, pesticides, fuels, and other potentially toxic or hazardous material to be used and stored in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect them from vandalism, corrosion, and leakage and to provide for spill prevention and countermeasures.
 - (b) A description of potentially toxic or hazardous wastes to be generated, indicating storage and disposal method.
 - (c) For underground storage of toxic and hazardous materials, evidence of qualified professional supervision of system design and installation.
- (4) Review and approval considerations.
 - (a) Special permits shall be granted only if the Board of Selectmen determined that at the boundaries of the premises the groundwater quality resulting from the ~~onsite~~on-site waste disposal, other ~~onsite~~on-site operations, natural recharge, and background water quality will not fall below the standards established by the DEP in: "Drinking Water Standards of Massachusetts" or, for parameters where no standard exists, below standards established by the Board of Health, and wherever existing groundwater is already below those standards, upon determination that the proposed activity will result in no further degradation.
 - (b) A special permit issued by the Board of Selectmen shall be conditioned upon the following additional limitations to protect the water supply:
 - [1] Safeguards. Provisions shall be made to protect against toxic or hazardous materials discharged or lost through corrosion, accidental damage, spillage or vandalism through such measures as provision for spill control in the vicinity of chemical or fuel delivery points, secure storage areas for toxic or hazardous materials, and indoor storage provision for corrodible or dissolvable materials.
 - [2] Location. Where the premises are partially outside the Water Supply Protection District, such potential pollution sources as on-site waste disposal systems shall, to the degree feasible, be located outside the district.
 - [3] Disposal. For any toxic or hazardous wastes to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of disposal methods which are in conformance with MGL c. 21C.

- [4] Drainage. All runoff from impervious surfaces shall be recharged on the site, diverted towards areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are infeasible and shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination.
 - [5] Monitor test wells. Where fertilizers, pesticides, herbicides or other potential contaminants are to be applied, utilized or stored, and in the opinion of the Board of Selectmen are a matter of concern, a groundwater monitoring program shall be established before the special permit is granted. Such a program shall adequately monitor the quality of the groundwater leaving the site through the use of monitor wells and/or appropriate groundwater sample analysis.
 - [6] Natural vegetation. ~~Not~~ more than 50% of natural vegetation, existing as of the effective date (June 18, 1990) of the adoption of this amendment to the bylaw on any lot, may be disturbed in any underlying district. However, to the extent that there is a finding that surface or groundwater drainage activity from the applicant's proposed use or activity on the site has decreasing, minimal or no impact on the municipal well field, the Board of Selectmen may relax the requirements of the preceding sentence, but in no event to a standard which is less restrictive than that set forth in the "minimum usable open space" paragraph of § 230-5.3B(2).
 - [7] Technical reference. The Board of Selectmen and applicants shall use the following technical references in the preparation and review of plans under this section: "Guidelines for Soil and Water Conservation in Urbanizing Areas of Massachusetts" 1977, U.S.D.A. Soil Conservation Service, Amherst, Massachusetts or equivalent; and Guide to Contamination Sources for Wellhead Protection- 1989, Department of Environmental Quality Engineering - with special attention to the matrix entitled, "Land Use/Public Supply Well Pollution Potential Matrix."
- (5) Additional rules and regulations. The Board of Selectmen shall adopt additional rules and regulations relative to the issuance of a special permit under this section. Such rules shall consider, but need not be limited to, requirements to control causes of pollution to underground surface water.

§ 230-8.3.A. Towers, windmills and radio transmitters. [Amended 5-7-2010 ATM by Art. 27]

Towers, including windmills with rated power less than or equal to 60 kilowatts, radio transmitters and receivers, dish antennas, and similar structures may be permitted in all districts, provided they meet the following requirements:

- A. Generating capacity in residential areas. Windmills for generation of electricity in residential areas shall have a maximum generating capacity of twice the requirements of the property owner of the same lot.
- B. Setback requirements.
 - (1) Setback. The minimum setback distance for all towers from any abutter's property line shall be (and shall continue to be for the life of the installation) at least equal to the maximum height of the tower and its tower-mounted equipment plus 20 feet. Setbacks will be measured to the tower base.

- (2) The Board of Appeals may grant a special permit for installations which do not meet the setback requirements if:
 - (a) All other conditions of this bylaw are met; and
 - (b) The waiver of the setback requirement does not, in the opinion of the Board, create a safety hazard and/or derogate substantially from the public good.
- C. Tower height. All freestanding towers exceeding 35 feet in height and all towers exceeding 65 feet from grade when mounted on buildings require a special permit from the Board of Appeals. Special permits may be issued if the applicant can demonstrate to the Board that:
 - (1) It is necessary to extend higher than the limit for effective operation of the equipment to be mounted on the tower;
 - (2) The installation will not derogate substantially from the public good.
- D. Tower access. Climbing access to the tower shall be restricted by limiting tower climbing apparatus to no lower than 10 feet from the ground, or, for towers that are climbable without climbing apparatus, the lowest 10 feet shall be covered with a smooth ~~un-climbable~~, unclimbable surface.
- E. Maintenance. If a tower is designated a safety hazard by a registered professional structural or civil engineer, or if a tower is abandoned for more than two years, the owner of said tower shall be required to dismantle the tower. All tower-mounted equipment shall be operated in a safe and responsible manner.
- F. Radio/Television interference. The applicant shall furnish the Building Commissioner or the Board of Appeals, if required as a condition to a special permit, a written commitment that any interference caused by the tower or equipment on the tower to local radio and/or television reception will be corrected within 60 days at the applicant's expense. If, in the opinion of the Board of Selectmen, noise is found to be excessive, as observed at the lot line of the lot on which the device is located, the owner shall reduce the noise to an acceptable level. Failure to comply with this ~~section~~subsection shall constitute just cause requiring the structure to be immediately removed.
- G. Certification of structural design. Applicants for permits for towers over the minimum height must have the design of the tower certified as structurally safe by a registered professional structural or civil engineer before the permit can be issued.

§ 230-8.3.B. Land-based commercial and public-partnered wind turbines. [Amended 5-17-2010 ATM by Art. 27]

- A. Application. This bylaw shall be limited in its use and application to only an applicant that has been formed and established as a partnership or similar business entity ~~by~~ between a commercial or nonprofit organization and the Town of Marion pursuant to a written agreement which sets forth the terms and conditions of said partnership, and which has been approved and formally executed on behalf of the Town of Marion by the Board of Selectmen, with the advice and counsel of the Alternative Energy Committee.
- B. Generating capacity. Land-based commercial-sized wind turbine facilities are defined as those turbines with a rated power greater than 60 kilowatts (60kW).
- C. General requirements. Proposed wind turbine installations shall be consistent with all applicable Town, state and federal requirements, including, but not limited to, all applicable electrical, construction, noise, safety, environmental and communications requirements. The installation and operation of a wind turbine shall require the issuance of a special permit issued by the Board of

Appeals (ZBA) pursuant to the requirements of § 230-7.2 of the Zoning Bylaw and those additional conditions contained in § ~~230-8.3.B11~~3B, Subsection L, below.

D. Dimensional requirements.

- (1) Height. In no case shall the height of the tower exceed 480 feet. Site-specific requirements, see ~~items b.~~Subsection D(2) and ~~e.(3)~~below, may require a lesser height. The height of a wind turbine shall be measured from natural grade to the tip of the rotor blade at its tallest point, or blade-tip length.
- (2) Clear area: the area of a circle centered at the base of the wind turbine tower and having a radius equal to 1.0 times the height of the wind turbine. This area shall be clear of all buildings, critical infrastructure, or private or public ways that are not part of the wind turbine facility.
- (3) Setback. The minimum distance from the nearest property line or residence to the center or base of the wind turbine shall be equal to three times the height of the wind turbine. The ZBA may reduce the minimum setback distance as appropriate based on site-specific considerations or written consent of the affected abutter(s) if the project satisfies all other criteria for granting of a building permit under the provisions of this section.

E. Noise requirements. The wind turbine shall conform to Massachusetts noise regulation 310 CMR 7.10. The Massachusetts Department of Environmental Protection Noise Level Policy established for implementing this regulation specifies that the ambient sound level, measured at the property line of the facility or at the nearest inhabited buildings, shall not be increased by more than 10 decibels weighted for the "A" scale or 10 dB(A) due to the sound from the facility during its operating hours.

F. Visual requirements.

- (1) Unless required by the Federal Aviation Administration (FAA), wind turbines shall not be lighted on a continuous basis. Lighting of equipment, structures, and any other facilities on site (except lighting required by the FAA) shall be shielded from abutting properties.
- (2) The wind turbine structure shall be free of all company logos, advertising, and similar promotional markings. Signs on the facility shall be limited to those needed to warn of any danger; and educational signs providing information on the technology. All signs shall comply with the requirements of the Town's sign regulations.
- (3) The applicant shall minimize any impact on the visual character of surrounding neighborhoods and the community by painting the wind turbine structure a ~~non-reflective~~nonreflective color that blends with the surroundings. Wind energy facilities shall be sited and/or operated in a manner that minimizes shadowing or flicker impacts on the neighboring or adjacent uses.

G. Safety.

- (1) No hazardous materials or waste shall be discharged on the site of any wind turbine facility. If any hazardous materials or wastes are to be used on the site, the special permit shall incorporate provisions for full containment of such materials or waste. An enclosed containment ~~are~~area, designed to contain at least 110% of the volume of the hazardous materials or waste stored or used on the site, may be required to meet this requirement.
- (2) The wind turbine structure and facility shall also be designed to prevent unauthorized access (for example, by construction of a fenced enclosure or locked access, anti-climbing provisions, etc.).

- H. Underground utilities. All electrical connections from the wind turbine, including any associated substations, to either the point of use for the electricity or to the grid shall be made via underground conduits.
- I. Modifications. All modifications to a wind turbine installation made after issuance of the special permit shall require prior approval by the ZBA pursuant to MGL c. 40A, ~~s-~~§ 9 and the terms and conditions of this bylaw.
- J. Reporting. After each wind turbine is operational, the applicant shall submit to the special permit granting authority, at annual intervals from the date of issuance of the special permit, a report detailing operating data for the wind turbine, including, but not limited to, days of operation, daily electrical energy production, total energy production, emergent maintenance events.
- K. Monitoring and maintenance. The applicant shall maintain the wind turbine facility installation in good condition using a formal planned maintenance system based on historical experience, good engineering practice, and installed system and performance monitoring instruments. Such maintenance shall also include, but not be limited to, painting, maintaining the structural integrity of the foundation, support structure and security barrier (if applicable), and maintenance of the buffer areas and landscaping, if present.
- L. Special permit.
 - (1) A special permit issued by the ZBA for the construction or operation of any wind turbine shall be valid for 20 years, unless extended or renewed. Upon request, the ZBA may extend the time period or renew the special permit if there has been satisfactory operation of the facility. Any special permit issued under this bylaw shall lapse within one year from the grant thereof if construction has not sooner commenced except for good cause as determined by the ZBA. Upon the lapse of a special permit, a new special permit must be issued before construction or installation of the wind turbine may proceed. Upon expiration or termination of the special permit, the owner shall remove the wind turbine facility. A special permit granted for a wind turbine facility requires that the ZBA make written findings as set forth in § 230-7.2 of the Zoning Bylaw and, in addition, conclude that the wind turbine facility will not unreasonably interfere with the use or enjoyment of property abutting the proposed wind turbine facility and property within 300 feet of the location of the wind turbine facility.
 - (2) Pre-application conference. Prior to the submission of an application for a special permit under this regulation, the applicant is strongly encouraged to meet with the ZBA at a public meeting to discuss the proposed wind turbine installation in general terms and to clarify the filing requirements.
 - (3) Pre-application filing requirements. The purpose of the ~~preapplication~~pre-application conference is to inform the ZBA as to the general nature of the proposed wind turbine. As such, no formal filings are required to be presented at the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary drawings or to present manufacturer's drawings and specifications to inform the ZBA of the location and overall design of the proposed facility, as well as its scale, noise levels, and proximity to abutting residential structures.
 - (4) Application filing requirements. At a minimum, the following shall be included with the application for a special permit for each wind turbine. The ZBA may require additional information where it deems necessary to render a decision in the application for a wind turbine.

- (a) Name, address, telephone number, and original signature (photo-reproductions of signatures will not be accepted) of applicant and any co-applicants. Co-applicants may include the landowner of the subject property or the operator of the wind turbine.
- (b) If the applicant or co-applicant will be represented by an agent, the name, address and telephone number of the agent shall be provided as well as an original signature authorizing the agent to represent the applicant and/or co-applicant. Photo-reproductions of signatures will not be accepted.
- (c) Documentation of the legal right to install and use the proposed wind turbine and proof of control over the clear area, as required by ~~Sections 8.3.B.3 a, b,~~ Subsection D(1), (2) and e(3) of this bylaw. A copy of the recorded deed to the property shall be sufficient for this purpose if the applicant is the record owner of the property.
- (d) If the property is to be leased or subject to an easement, the applicant shall provide a copy of the lease or easement instrument.
- (e) Identification of the subject property by including the name of the nearest road or roads, and street address, if any; Assessors map and parcel number of subject property; zoning district designation for the subject parcel with separately submitted locus map; a one-inch-equals-forty-feet vicinity plan, signed and sealed by a licensed professional land surveyor showing the following:
 - [1] Property lines for the subject property, and all properties adjacent to the subject property within 300 feet.
 - [2] Proposed location of the wind turbine(s), fencing, associated ground equipment, transmission infrastructure and access roads.
 - [3] The outline of all existing buildings, including their purpose(s) (e.g., residential buildings, garages, accessory structures, etc.), on the subject property and all adjacent properties within 300 feet, and the distances, at grade, from the proposed wind turbine to each building on the vicinity plan shall be shown.
 - [4] Existing (before) condition photographs. A color photograph of the current view shall be submitted from at least two locations to show the existing conditions.
 - [5] Proposed (after) condition representations. Each of the existing condition photographs shall have the proposed wind energy conversion facility superimposed on it to accurately simulate the proposed wind energy conversion facility when built and illustrate its total height, width, and breadth.
 - [6] For wind turbines with hub heights of 165 feet (50 meters) ~~or~~ greater, sight-line representations must be provided. A sight-line representation shall be drawn from representative locations that show the lowest point of the turbine tower visible from each location. Each sight-line shall be depicted in profile, drawn at one-inch-equals-forty-feet scale. The profiles shall show all the intervening trees and buildings. There shall be at least two sight-line representations illustrating the visibility of the facility from surrounding areas as the closest residence or place of business, or nearby public roads or areas. Documentation of the wind turbine manufacturer and model, rotor diameter, tower height, tower type and foundation type/dimensions. Tower and foundation drawings and specifications signed by a professional engineer(s) licensed to practice in the Commonwealth of Massachusetts. Materials of the proposed wind turbine shall be specified by type

and specific treatment. This information shall be provided for the wind turbine tower and all other proposed equipment/facilities.

- [7] Colors of the proposed wind turbine shall be represented by a color board showing actual colors proposed. If lighting of the site or turbine is proposed by the applicant or required by the FAA, the applicant shall submit a copy of the FAA's determination to establish the required markings and/or lights for the structure. The applicant shall also submit a printout of a computer-generated, point-to-point simulation indicating the horizontal ~~foot-candle~~footcandle levels at grade, both within the property to be developed and 300 feet beyond the property lines. The printout shall indicate the locations and types of luminaries proposed.
 - [8] The applicant shall provide a statement listing the existing ambient noise levels at the property boundaries of the proposed wind turbine and the maximum future projected noise levels from the proposed wind turbine. Such statement shall be certified and signed by a professional engineer licensed in the Commonwealth of Massachusetts, stating that noise projections are accurate and meet the noise standards of this bylaw and the Massachusetts noise regulation 310 CMR 7.10 and are acceptable under Massachusetts Department of Environmental Protection guidance for noise measurements.
 - [9] To ensure safe operation of the wind turbine, the applicant shall provide a statement from the wind turbine manufacturer giving the recommended maintenance procedures and schedule, and an operation and maintenance plan by the applicant to follow said procedures and schedule.
 - [10] The applicant shall provide a detailed business plan for the project, including but not limited to the goals of the project, the stakeholders, and the time-line of anticipated activities.
 - [11] The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a cost-of-living adjustment for removals after 10, 15 and 20 years. The ZBA shall require the applicant to provide a form of surety (i.e., post a bond, establish an escrow account, or other) at the ZBA's election at the time of construction to cover the costs of removal in the event the Town must remove the facility. The amount of such surety shall be equal to 150% of the anticipated cost of compliance with this section.
 - [12] The applicant shall provide evidence that the utility company that operates the electrical grid where the facility is to be located has been informed of the customer's intent to install an interconnected customer-owned generator.
 - [13] The applicant shall identify the proposed clearing of natural vegetation for the construction, operation and maintenance of the wind turbine facility.
 - [14] The ZBA may require additional information and ~~dated~~data from the applicant as it determines relevant to the application, in its sole discretion.
- (5) Professional fees. The Town may retain a technical expert/consultant and legal services, pursuant to MGL c. 44, § 53G, to verify information presented by the applicant. The cost for such a technical/consultant and legal services, if needed, will be at the expense of the applicant pursuant to the terms and conditions of MGL c. 44, § 53G.

- (6) Adjudication of special permit applications. The ZBA shall make a formal decision regarding each application for ~~Special Permit~~ special permit for a wind turbine. The ZBA shall base any decision pursuant to the requirements of § 230-7.2 of the Zoning Bylaw and the provisions of this bylaw.
- M. Abandonment or discontinuation of use.
- (1) Notification requirements. At such time that a wind turbine is scheduled to be abandoned or discontinued, the applicant will notify the ZBA and Building Commissioner by certified U.S. Mail of the proposed date of abandonment or discontinuation of operations. In the event that an applicant fails to give such notice, the facility shall be considered abandoned or discontinued if the wind turbine is inoperable for 180 consecutive days.
 - (2) Physical removal. Upon abandonment or discontinuation of use, the owner shall physically remove the wind turbine within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and the discretion of the ZBA. "Physically remove" shall include, but not be limited to: removal of the wind turbine and tower, all machinery, equipment shelters, security barriers and all ~~appurtenant~~ appurtenances from the subject property, proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations, and restoration of the location of the wind turbine to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the "after-" condition.
- N. Change of owner. Once a special permit for a commercial wind turbine has been approved, the applicant shall duly record a copy of the special permit with the Plymouth County Registry of Deeds. All subsequent deeds to the property shall refer to the special permit and incorporate it by reference. All conditions under which the special permit was originally granted shall be binding on all successive owners of the property. In the event of a transfer of ownership, the original owner shall notify the Chief Executive Officer of the Town by certified U.S. Mail of the transfer in ownership within 30 days of the transaction.
- O. Severability of provisions. The provisions of this bylaw are severable. If any provision of this bylaw is held invalid, the other provisions shall not be affected thereby. If application of this bylaw or any of its provisions to any person or circumstance is held invalid, the application of this bylaw and its provisions to other persons and circumstances shall not be affected thereby.

§ 230-8.4. Rear lots. [Added 3-28-1989 STM by Art. 4; amended 3-10-1997 STM by Art. S3; 10-25-2004 STM by Art. S20]

Individual lots in Residence Districts need not have the required amount of lot frontage, provided that all of the following conditions can be met for each individual lot lacking such frontage:

- A. The area of said lot is at least double the minimum area normally required for the district.
- B. A building line is designated on the plan, and the width of the lot at that line equals or exceeds the number of feet normally required for street frontage in the district.
- C. Lot width is at no point less than 35 feet, and lot frontage is not less than 35 feet. Frontage shall meet all of the requirements contained in the definition for "frontage" in Article XI herein.
- D. Not more than one rear lot shall be created from a property, or a set of contiguous properties held in common ownership as of March 10, 1997. Documentation to this effect shall be submitted to the Planning Board along with the application for approval not required or definitive subdivision plans under the Subdivision Control Law. The Building Commissioner shall not issue a building permit for

any rear lot without first establishing that compliance with this provision has been determined by the Planning Board.

- E. At the time of the creation of the rear lot, it shall be held in common and contiguous ownership with the front lot.
- F. The applicant shall submit a plan to the Planning Board under the Subdivision Control Law depicting both the rear lot and the front lot from which the rear lot was created.
- G. Rear lots serving single-family structures shall have front, rear, and side yards equal to or in excess of those required in the district.
- H. Any lot lawfully in existence as of June 1, 2004, that complied with the requirements of § 230-8.4 at the time said lot was created shall be considered in compliance with the frontage, area and width provisions of the Zoning Bylaw in effect at the time a building permit is sought for said lot and therefore be eligible for a building permit as a lot that conforms to zoning; provided, however, that the resulting structure shall comply with the front, rear, and side yard setback requirements under the Zoning Bylaw in effect at the time the lot was created.

§ 230-8.5. Surface Water District. [Added 6-18-1990 STM by Art. 4]

- A. Purpose.
 - (1) The purpose of this section is to provide municipal control of the use of coastal water areas which are not within any of the Town's land use zoning districts in order to protect and enhance the natural and man-made environmental qualities of the Town of Marion, encourage water-dependent uses where appropriate, and preclude uses which could evolve because other Town, state or federal laws and regulations do not provide sufficient protection of the public interest.
 - (2) All areas within the Surface Water District shall also be subject to the rules and regulations as are from time to time issued by the Marine Resources Commission or the Harbormaster in support of the authority granted under MGL c. 91 and further subject to any special bylaws as may be adopted by the Town, and further subject to the granting of licenses and/or permits required by the Town, state or federal boards or agencies exercising authority granted to them by laws other than MGL c. 40A.
 - (3) All traditional uses of the surface waters for recreational and commercial purposes shall be permitted except as otherwise set forth herein.
- B. District boundaries. The district defined by these regulations shall cover all water areas within the municipal limits of the Town of Marion seaward of the low water mark as said mark is defined in Chapter 91 Regulations promulgated by the Massachusetts Department of Environmental Protection.
- C. Prohibited uses. The following uses shall not be allowed within the Surface Water District:
 - (1) Boatels and similar facilities offering temporary sleeping and/or eating accommodations.
 - (2) Residential uses, except that a vessel equipped with a Type 3 holding tank or other Coast Guard-approved wastewater device, and anchored or moored in accordance with applicable Town mooring regulations, may be used for human habitation for a period which cumulatively shall not exceed nine months within any calendar year.
 - (3) Floating office, industrial, and commercial uses except as they may be accessory to and allowed by special permit under § 230-8.5D.
- D. Special permit uses.

- (1) The Planning Board shall be the special permit granting authority. The following uses may be allowed within the Surface Water District only by special permit from the Planning Board:
 - (a) Boat launching ramps.
 - (b) Landing facilities.
 - (c) Marinas as defined by MGL c. 91.
 - (d) Piers, commercial.
 - (e) Service facilities for the repair or maintenance of vessels.
 - (f) Underwater sewer, water and electrical lines and pipes.
 - (2) The following uses may be allowed in both the Surface Water District and an adjoining residential land use district by special permit from the Planning Board: [Amended 4-24-2000 ATM by Art. 26]
 - (a) Association piers subject to the provisions of § 230-7.4F.
 - (b) Accessory use piers subject to the provisions of § 230-7.4E.
- E. Special permit review procedure. Special permits shall be granted only after the Planning Board:
- (1) Reviews the written recommendations of the Marine Resources Commission, Harbormaster, Selectmen, Board of Health, and Conservation Commission. Upon receipt of the special permit application, the Planning Board shall forward a copy of the application to each of the above--named authorities for comment. Failure of any of the above--named authorities to submit written recommendations to the Planning Board within 35 days of the initial filing of the special permit application shall be deemed a favorable recommendation of said authority. If the Planning Board allows or denies a use which is contrary to the recommendations of the Marine Resources Commission, the Planning Board shall so state its reasons in writing when making the decision.
 - (2) Determines that the proposed use is consistent with the provisions of the Marine Land Use Plan or Master Plan and the Open Space Plan as they are from time to time adopted and amended.
 - (3) Determines that the proposed use is consistent with any Town of Marion Harbor Plan.
 - (4) Determines that the proposed use is a water--dependent use, meaning those uses and facilities which require direct access to, or locations in marine or tidal waters and which therefore cannot be located inland (ref. MGL c. 91, Waterways Law).
 - (5) Determines that the landward facilities, such as parking and access ways, will not constitute an adverse influence on adjoining properties.

§ 230-8.6. Accessory apartments. [Added 11-13-2000 STM by Art. S7; amended 10-15-2001 STM by Art. S13; 4-29-2003 STM by Art. S8; 4-25-2005 ATM by Art. 31]

- A. Purpose. The purpose of accessory apartments is to provide additional dwelling units to rent without adding to the number of buildings in the Town or to alter substantially the appearance of the Town. An accessory apartment is intended to provide assistance in the provision of affordable housing opportunities for families and individuals of all ages.
- B. Procedure. A single-family dwelling, lawfully in existence as of the date of the adoption of this bylaw, or an accessory structure located on the same lot as a single-family dwelling lawfully in existence as

of the date of the adoption of this bylaw, may be converted such that it contains an accessory dwelling unit (an accessory apartment), provided that requirements of § 230-7.2 of the Zoning Bylaw and the following terms and conditions are met.

C. Minimum submittal and performance standards.

- (1) The applicant shall submit a plot plan prepared by a registered land surveyor that shows the following: the existing dwelling unit, accessory structure(s) and/or proposed accessory apartment, location of any septic system, required parking, and all residential dwellings within 150 feet of the proposed accessory apartment. A mortgage inspection survey, ~~property~~properly adapted by a surveyor, shall be sufficient to meet this requirement.
- (2) Any special permit shall be subject to review and approval by the Board of Health as to sanitary wastewater disposal in full conformance with the provision of 310 CMR 15.00 (Title V of the State Environmental Code), assurance that there is an adequate supply of potable water and the proposed drainage plans, if any, required due to the construction of new parking spaces or alteration to existing structures;
- (3) The Board of Appeals shall require the owner of the property to provide an affidavit, subject to the pains and penalties of law, certifying that the owner of the property, except for bona fide temporary absence, shall occupy one of the two dwelling units.
- (4) Not more than one accessory apartment may be established on a lot. The accessory apartment shall not exceed 1,200 square feet in floor space, must be smaller than the area of the main part of the dwelling and shall be located in the principal residential structure or within an accessory building. [Amended 5-21-2012 ATM by Art. 34]
- (5) The external appearance of the structure in which the accessory apartment is to be located shall not be significantly altered from the appearance of a single-family structure, in accordance with the following:
 - (a) Any accessory apartment construction shall not create more than a ~~50%~~fifty-percent increase in the gross floor space of the structure existing as of the date of the adoption of this bylaw.
 - (b) Any stairways or access and egress alterations serving the accessory apartment shall be enclosed, screened, or located so that visibility from public ways is minimized.
 - (c) Sufficient and appropriate space for at least one additional parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway.
 - (d) The design and size of the apartment conforms to all applicable standards in the health, building, and other relevant codes and regulations.
- (6) The Board of Appeals shall require as a condition of the special permit that the special permit is not transferable or assignable and that it shall lapse, by operation of law, when the property (in whole or in part) that is subject to the special permit is transferred or sold.
- (7) The Board of Appeals shall take into consideration the reports of Town agencies, departments and boards and shall make specific findings as to the decision's consistency or inconsistency with the reports received from the Planning Board and Board of Health.
- (8) The Board of Appeals shall obtain a certification from the applicant that the apartment will be occupied by an immediate family member of the owner or shall be an affordable housing unit

in compliance with the definition of "affordable housing unit" in § 230-8.12B of the Zoning Bylaw.

§ 230-8.7. Sippican River Protection Overlay District.

A. Purposes. The purposes of the Sippican River Overlay District are to:

- (1) Prevent and control water pollution, especially from non-point sources, and thereby improve the water quality of the river;
- (2) Promote the preservation of the scenic qualities of the natural landscape (indigenous vegetation) along the river;
- (3) Prevent any additional disruptions to the natural flow of the river;
- (4) Protect fisheries and wildlife habitat within and along the river;
- (5) Control erosion and siltation;
- (6) Enhance and preserve existing agricultural lands, floodplains and other environmentally sensitive areas along the shoreline;
- (7) Conserve shore cover and encourage well-designed and environmentally sensitive developments and agricultural and other farming uses.

B. Scope of authority. All existing regulations of the Marion Zoning Bylaws applicable to ~~such~~the underlying district shall remain in effect, except that where the Sippican River Protection Overlay District imposes additional regulations, such regulations shall prevail.

C. District delineation. The area covered by this overlay district shall be all contiguous portions of the Sippican River in the Town of Marion, its shores and landward up to 200 feet from the normal high water line. All distances shall be measured in horizontal feet. The upstream boundary of the district is the Rochester Town line; the downstream boundary is a line drawn from the tip of Rose Point to the westerly line of the Town beach lot on River Road. This overlay district is shown on the Zoning Map of the Town of Marion, dated May 12, 2014. [Amended 5-12-2014 ATM by Art. 39]

D. Permitted uses. The following uses are permitted within the district, provided they are in conformance with the river protection standards in Subsection G:

- (1) Agricultural production, including raising of cranberries, livestock, poultry, nurseries, orchards, hay and other crops;
- (2) Recreational uses, provided there is minimal disruption of wildlife habitat;
- (3) Maintenance and repair usual and necessary for continuance of an existing use;
- (4) Conservation of water, plants and wildlife, including the raising and management of wildlife;
- (5) Emergency procedures necessary for safety or protection of property;
- (6) ~~Single-~~family residences on lots fronting on a way not requiring approval under the Massachusetts Subdivision Control Law, MGL c. 41;
- (7) Maintenance of the river may be done under the requirements of MGL c. 131, § 40 and any other applicable laws, bylaws and regulations.

E. Prohibited uses.

- (1) All uses of outboard motors, including jet skis, of any type on the river west of the County Road bridge;
 - (2) See Subsection G for limitations with the buffer strip;
 - (3) All other uses not specifically permitted or allowed by variance granted by the Zoning Board of Appeals within the overlay district are prohibited.
- F. Additional site plan approval criteria. All residential subdivisions which require approval under MGL c. 41 shall require site plan approval from the Planning Board. In addition to the standards contained in MGL c. 41, the Planning Board shall also consider whether the use or uses proposed in the River Protection Overlay District ~~meets~~meet the following criteria:
- (1) ~~Is~~Are situated on a portion of the site that will most likely conserve shoreland vegetation and the integrity of the buffer strip;
 - (2) ~~Is~~Are integrated into the existing landscape through features such as vegetative buffers and through retention of the natural banks of the river;
 - (3) Will not result in erosion or sedimentation;
 - (4) Will not result in water pollution.
- G. River protection standards. All land uses, including all residences developed on ~~river front~~riverfront lots, shall comply with the following standards:
- (1) A buffer strip extending 100 feet in depth, to be measured landward from the high water line of the Sippican River, shall be required for all lots within the River Protection Overlay District. If any lot existing at the time of adoption of this bylaw does not contain sufficient depth, measured landward from the high water line, to provide a one-hundred-foot buffer strip, the buffer strip may be reduced to 50% of the available lot depth, measured landward from the high water line.
 - (a) Within the buffer strip, no trees or other vegetation shall be harvested, cut, removed, thinned or otherwise disturbed other than:
 - [1] Cutting and removing of dead vegetation; or ~~of~~
 - [2] Selected cutting within the buffer strip when it will not cause significant adverse environmental impact with respect to the stability of the river bank and is subject to the following: no more than 50% of the live trees five inches or more in diameter breast ~~high~~height during any ten-year period, or the removal of more than 1/2 of the total vegetative cover within the portion of each parcel that is within the buffer strip.
 - (b) No building ~~not~~nor structures shall be erected or moved into the buffer strip.
 - (2) ~~On-site~~On-site disposal systems shall be located as far from the Sippican River as is feasible and shall conform to the provisions of 310 CMR 15, Title V of the Massachusetts State Environmental Code and the Marion Sanitary Code.
 - (3) All new development shall be integrated into the existing landscape on the property so as to minimize its visual impact and maintain the natural beauty of environmentally sensitive shoreline areas through use of vegetative and structural screening, landscaping, grading and placement on or into the surface of the lot.

- (4) Runoff from all agricultural and farming activities and from new development, building or change in building or site must be contained within the development or site. There shall be no net increase in ~~offsite~~off-site runoff, nor any degradation of water quality in the water leaving the site.

H. Nonconforming use.

- (1) Any lawful use, building, structures or parts thereof existing at the effective date of this bylaw, or amendment thereto, and not in conformance with the provisions of this bylaw, shall be considered to be a nonconforming use.
- (2) Any existing use or structure may continue and may be maintained, repaired and improved but in no event made larger unless permission is granted by the Zoning Board of Appeals.
- (3) Any nonconforming structure which is destroyed may be rebuilt on the same location, but no larger than its overall original square footage unless permission is granted by the Zoning Board of Appeals.

I. Hardships. To avoid undue hardships, nothing in this bylaw shall be deemed to require a change in design, construction or intended use of any structure for which a building permit was legally issued prior to the effective date of this bylaw. Such construction must be completed within two years from the effective date of this bylaw or such construction shall be required to conform to this bylaw.

J. Severance. If any section or part thereof of this bylaw is held to be invalid, the remainder of this bylaw shall not be affected thereby.

K. Definitions. As used in this section, the following terms shall have the meanings indicated:

BANK — That portion of the land surface which normally abuts and confines the ~~review~~river. The upper boundary of a bank is the first observable break in the slope or the mean annual flood level whichever is lower.

HIGH WATER LINE — A line located within a river bank that is apparent from visible markings, changes in character of solids or vegetation due to prolonged presence of water and which distinguishes predominantly aquatic land ~~form~~from predominantly terrestrial land.

§ 230-8.8. Adult uses. [Added 3-10-1997 STM by Art. S8]

The following regulations shall apply to adult uses as defined herein.

A. Separation distances. Adult uses may be permitted only when located outside the area circumscribed by a circle which has a radius consisting of the following distances from specified uses or zoning district boundaries:

- (1) One thousand feet from the district boundary line of any residence zone;
- (2) One thousand feet from any other adult use as defined herein;
- (3) Five hundred feet from any establishment licensed under MGL c. 138, § 2.

B. Measurement of radius. The radius distance shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed adult use is to be located, to the nearest point of the parcel of property of the zoning district boundary line from which the proposed adult use is to be separated. In the case of the distance between adult uses [Subsection A(2)] and between an adult use and an establishment licensed under MGL c. 138, § 12 [Subsection A(3)], such distances shall be measured between the closest points of the buildings in which such uses are located.

- C. Maximum ~~useable~~usable floor area. With the exception of an adult cabaret or an adult motion-picture theater, adult uses may not exceed 2,500 square feet of gross floor area.
- D. Parking requirements. The following parking requirements shall apply:
 - (1) Parking for adult bookstores, adult paraphernalia stores, and adult video stores shall meet the requirements of § 230-6.5 for general retail ~~stores~~.
 - (2) Parking for adult cabarets and adult motion-picture theaters shall meet the requirements of § 230-6.5 for private clubs.
 - (3) Parking shall be provided in the side or rear yard area only.
 - (4) All parking areas shall be illuminated, and all lighting shall be contained on the property.
 - (5) Parking areas shall be landscaped in conformance with the appropriate provisions of this Zoning Bylaw.
- E. Screening and buffers. A five-foot-~~wide~~ landscaped buffer shall be provided along the side and rear property lines of an adult use establishment consisting of evergreen shrubs or trees not less than five feet in height at the time of planting, or solid fence not less than five feet in height.
- F. Visual access. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- G. Application for special permit. The Planning Board shall be the special permit granting authority for the purposes of this § 230-8.8. An application for a special permit for an adult use establishment shall include the following information:
 - (1) Name and address of the legal owner of the establishment;
 - (2) Name and address of all persons having lawful equity or security interest in the establishment;
 - (3) Name and address of the manager;
 - (4) Number of employees;
 - (5) Proposed provisions for security within and without the establishment;
 - (6) The physical layout of the interior of the establishment.
- H. Prohibition. No adult use special permit shall be issued to any person convicted of violating the provisions of MGL c. 119, § 63 or MGL c. 272, § 28.
- I. Public hearing. An adult use special permit shall only be issued following a public hearing held within 65 days after the filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant.
- J. Lapse. Any adult use special permit issued under the bylaw shall lapse within one year, not including such time required to pursue or await the determination of an appeal from the grant thereof, if substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.
- K. Severability. Any provision of this § 230-8.8, or portion thereof, declared invalid shall not affect the validity or application of the remainder of said section of this Zoning Bylaw.

§ 230-8.9. Driveways. [Added 3-10-1997 STM by Art. S4]

- A. General. For the purpose of promoting the safety of the residents of the Town, an application for a building permit for a residential structure shall include a plan, at a scale of one inch equals 100 feet, showing the driveway serving the premises, and showing existing and proposed topography at ~~10 feet~~ten-foot or three-meter contour intervals. All driveways shall be constructed in a manner ensuring reasonable and safe access from the public way serving the premises to within a distance of 100 feet or less from the building site of the residential structure on the premises, for all vehicles, including but not limited to emergency, fire, and police vehicles. The Building Commissioner shall not issue a building permit for the principal structure on the premises unless all of the following conditions have been met:
- B. Except in access strips of less than 50 feet width to rear lots, no driveway shall be located within 10 feet of any side or rear lot line without written approval by the appropriate abutter(s), or by special permit by the Planning Board after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.
- C. The distance of any driveway measured from the street line to the point where the principal building is proposed shall not exceed a distance of 500 feet, unless the Planning Board shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.
- D. The grade of each driveway where it intersects with the public way shall not exceed 8% for a distance of 20 feet from the travel surface of the public way unless the Planning Board shall grant a special permit after a determination that said driveway will provide safe and reasonable access for fire, police and emergency vehicles.
- E. Driveways serving the premises shall provide access through the required frontage of the serviced lot, except in the case of a "common driveway" under Subsection F, herein.
- F. A common driveway with a single access point, serving not more than two lots, may be allowed on special permit by the Planning Board. A driveway with two access points, designed as a loop, serving three to six lots may be allowed on special permit by the Planning Board. A common driveway must satisfy all of the conditions in this § 230-8.9, as well as all of the following conditions: [Amended 10-15-2001 STM by Art. S9]
 - (1) The center line intersection with the street center line shall not be less than 45°;
 - (2) A minimum cleared width of 12 feet shall be maintained over its entire length;
 - (3) A roadway surface of a minimum of four inches of graded gravel, placed over a properly prepared base, graded and compacted to drain from the crown, shall be installed;
 - (4) The driveway shall be located entirely within the boundaries of the lots being served by the driveway and not along a side or rear boundary line;
 - (5) Proposed documents shall be submitted to the Planning Board demonstrating that, through easements, restrictive covenants, or other appropriate legal devices, the maintenance, repair, snow removal, and liability for the common driveway shall remain perpetually the responsibility of the private parties, or their successors-in-interest; and
 - (6) A common driveway may never be used to measure or determine lot frontage.

§ 230-8.10. Wireless Communications Facilities (WCF) Overlay District.

- A. Purpose. The purpose of this section is to establish areas in which wireless communications facilities may be provided while protecting Marion's unique community character. The WCF Overlay District has been created:
- (1) To provide for safe and appropriate siting of wireless communications facilities consistent with the Telecommunications Act of 1996~~;~~ and
 - (2) To minimize visual impacts from such facilities on residential districts and scenic areas within Marion.
- B. Location. The WCF District shall be located as follows: Lot 14 on Assessor's Plan 6; Lot 54 on Assessor's Plan 15; Lots 9 and 18 on Assessor's Plan 24; Lot 14 on Assessor's Plan 26. [Amended 10-28-1997 STM by Art. S2]
- C. Applicability. The WCF District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning shall remain in full force and effect, except as may be specifically superseded herein.
- D. Submittal requirements. As part of any application for a special permit, applicants shall submit, at a minimum, the information required for site plan approval, as set forth herein at Article IX. Applicants shall also describe the capacity of the facility, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity.
- E. Special permit. A wireless communications facility may be erected in the WCF District upon the issuance of a special permit by the Planning Board if the Board determines that the adverse effects of the proposed facility will not outweigh its beneficial impacts as to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following:
- (1) Communications needs served by the facility;
 - (2) Traffic flow and safety, including parking and loading;
 - (3) Adequacy of utilities and other public services;
 - (4) Impact on neighborhood character, including aesthetics;
 - (5) Impacts on the natural environment, including visual impacts;
 - (6) Potential fiscal impact, including impact on Town services, tax base, and employment;
 - (7) New monopoles shall be considered only upon a finding that existing or approved monopoles or facilities cannot accommodate the equipment planned for the proposed monopole.
- F. Conditions. All wireless communications facilities shall be subject to the following conditions: [Amended 10-15-2001 STM by Art. S16]
- (1) To the extent feasible, service providers shall co-locate on a single facility. Monopoles shall be designed to structurally accommodate foreseeable users (within a ten-year period) where technically practicable.
 - (2) New freestanding facilities shall be limited to monopoles; no lattice towers shall be permitted. Monopole height shall not exceed 100 feet above mean finished ground elevation at the base of the mounting structure; provided, however, that a monopole may be erected higher than 100 feet where ~~relocation~~co-location is approved or proposed, not to exceed a height of 130 feet above mean finished ground elevation at the base of the mounting structure.

- (3) Wireless communications facilities may be placed upon or inside existing buildings or structures, including water tanks and towers, church spires, electrical transmission lines, and the like. In such cases, the facility height shall not exceed 20 feet above the height of the existing structure or building.
- (4) All structures associated with wireless communications facilities shall be removed within one year of cessation of use. The Board may require a performance guarantee to ~~affect~~effect this result.
- (5) To the extent feasible, all network interconnections from the communications facility shall be via ~~landlines~~land lines.
- (6) Existing ~~onsite~~on-site vegetation shall be preserved to the maximum extent practicable.
- (7) The facility shall minimize, to the extent feasible, adverse visual effects on the environment. The Planning Board may impose reasonable conditions to ensure this result, including painting, lighting standards, landscaping, and screening.
- (8) Traffic associated with the facility shall not adversely affect public ways.
- (9) Fencing may be required to control unauthorized entry to wireless communications facilities.
- (10) The setback of the WCF from the property line shall be determined by the Planning Board based on the specific proposal presented. In no case will the setback be less than 40 feet.

§ 230-8.11. Erosion control. [Added 10-28-1997 STM by Art. S7]

Site design, materials, and construction processes shall be designed to avoid erosion damage, sedimentation or uncontrolled surface water runoff by conformance with the following:

- A. Grading or construction which will result in final slopes of 15% or greater on 50% or more of lot area, or on 30,000 square feet or more on a single lot, even if less than half the lot area, shall be allowed only under special permit from the Planning Board, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation.
- B. All such slopes exceeding 15% which result from site grading or construction activities shall either be covered with topsoil to a depth of four inches and planted with vegetative cover sufficient to prevent erosion or be retained by a wall constructed of masonry, reinforced concrete or treated pile or timber.
- C. No area or areas totaling one acre or more on any parcel or contiguous parcels in the same ownership shall have existing vegetation clear stripped or be filled six inches or more so as to destroy existing vegetation unless in conjunction with agricultural activity, or unless necessarily incidental to construction on the premises under a currently valid building permit, or unless within streets which are either public or designated on an approved subdivision plan, or unless a special permit is approved by the Planning Board on condition that runoff will be controlled, erosion avoided and either a constructed surface or cover vegetation will be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area or areas which are allowed by special permit shall remain through the winter without a temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity or an emergency situation, such as storm damage, where such temporary cover would be infeasible.
- D. The Building Commissioner may require the submission of all information from the building permit applicant or the landowner, in addition to that otherwise specified herein, necessary to ensure

compliance with these requirements, including, if necessary, elevation of the subject property, description of vegetative cover and the nature of impoundment basins proposed, if any.

- E. In granting a special permit, the Planning Board shall require a performance bond to ensure compliance with the requirements of this section.
- F. Hillside areas, except naturally occurring ledge or bedrock outcroppings or ledge cuts, shall be retained with vegetative cover, as follows:

Average Percentage Slope	Minimum Percentage of Land to Remain in Vegetation
10.0% to 14.9%	25%
15.0% to 19.9%	40%
20.0% to 24.9%	55%
25.0% to 29.9%	70%
30.0% and above	85%

§ 230-8.12. Inclusionary housing. [Added 4-29-2003 STM by Art. S1]

- A. Purpose and intent. The purpose of this bylaw is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with MGL c. 40B, §§ 20 through 23, and ongoing Town of Marion programs to promote a reasonable percentage of housing that is affordable to moderate-income buyers. It is intended that the affordable housing units that result from the bylaw be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Department of Community Affairs, Division of Housing and Community Development, and that said units count toward the Town's requirements under MGL c. 40B, §§ 20 through 23.

- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING UNIT — A dwelling unit that can be purchased at an annual cost that is no more than 30% of the homeowner's income, which is at or below 80% of the Town of Marion's median income as reported by the U.S. Department of Housing and Urban Development, including units under MGL c. 40B, §§ 20 through ~~23~~ 24 and the Commonwealth's Local Initiative Program (LIP).

QUALIFIED AFFORDABLE HOUSING UNIT PURCHASER — An individual or family with a household income that does not exceed 80% of the median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD).

- C. Applicability.

- (1) Division of land. This bylaw shall apply to the division of land held in single ownership as of April 29, 2003, or any time thereafter into six or more lots, whether said six or more lots are created at one time or the cumulative of six or more lots created from said land held in single ownership as of April 29, 2003, and shall require a special permit under Article VII of the Zoning Bylaw. A special permit shall be required for land divisions under MGL c. 40A, § 9 as well as for "conventional" or grid divisions allowed by MGL c. 41, §§ 81L and 81U, including those divisions of land that do not require subdivision approval.

- (2) Multifamily dwelling units. This bylaw shall apply to the construction of six or more multifamily dwelling units, whether on one or more contiguous parcels in existence as of April 29, 2003, and shall require a special permit under Article VII of the Zoning Bylaw.
 - (3) The provisions of Subsection C(2) shall not apply to the construction of six or more single-family dwelling units on individual lots, if said six or more lots were in existence as of April 29, 2003.
 - (4) The Planning Board shall be the special permit granting authority (SPGA) for all special permits under this bylaw.
- D. Mandatory provision of affordable units. The SPGA shall, as a condition of approval of any development referred to in Subsection C, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this bylaw and more fully described in Subsection E.
- E. Provision of affordable units.
- (1) The SPGA shall deny any application for a special permit for development if the applicant for special permit approval does not comply, at a minimum, with the following requirements for affordable units:
 - (a) At least 10% of the lots in a division of land or units in a multifamily unit development subject to this bylaw shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six dwelling units shall require one affordable unit, a development proposing 11 dwelling units shall require two affordable units, and so on;
 - (b) The affordable unit(s) shall be constructed or rehabilitated on:
 - [1] The locus property; or
 - [2] A locus different from the one subject to the special permit (see Subsection I); or
 - (c) An applicant shall make a donation of land or pay a fee in lieu of affordable housing unit provision (see Subsection L below).
 - (2) The applicant may offer, and the SPGA may accept, any combination of the Subsection E(1) requirements, provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by the bylaw.
- F. Provisions applicable to affordable housing units on- or off-site.
- (1) Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be situated so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as than the market-rate units.
 - (2) Minimum design and construction standards for affordable units. Affordable housing units with within market-rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units.
 - (3) Timing of construction or provision of affordable units or lots. The SPGA may impose conditions on the special permit requiring construction of affordable housing according to a

specified timetable, so that affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-Rate Unit	Affordable Housing Unit
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%

Any fractions of an affordable unit shall be rounded up to a whole unit.

- G. Local preference. The SPGA shall require the applicant to comply with local preference requirements, if any, as established by the Board of Selectmen.
- H. Marketing plan for affordable units. Applicants under this bylaw shall submit a marketing plan or other method approved by the SPGA, which describes how the affordable units will ~~mebe~~ marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers. The plan shall be in conformance to DHCD rules and regulations.
- I. Provision of affordable housing units off site. Subject to the approval of the SPGA, an applicant subject to this bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Subsection E off site. All requirements of this bylaw that apply to on-site provision of affordable units shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the SPGA as an integral element of the special permit review and approval process.
- J. Maximum incomes and selling prices: initial sale.
 - (1) To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns for the household and to certify in writing and prior to transfer of the title ~~the~~ to the developer of the housing units or his/her agent, and within 30 days following transfer of title to the Marion Board of Selectmen or to another authority as stipulated by them that the annual household income level does not exceed the maximum established by the Commonwealth's Division of Housing and Community Development (DHCD) and as may be revised from time to time.
 - (2) The maximum price of the affordable housing unit(s) created under this bylaw is established by DHCD under the Local Initiative Program (LIP) guidelines in effect at the time the unit(s) is built.
- K. Preservation of affordability; restrictions on resale. Each affordable unit created in accordance with the bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a deed restriction, acceptable to DHCD, on the property, recorded at the Plymouth County Registry of Deeds or the Land Court, and shall be in force for a period of 99 years.

- (1) Affordable housing unit(s) resale price. Sales beyond the initial sale to a qualified purchaser shall not exceed the maximum sales price as determined by the DHCD for affordability within the Town of Marion at the time of resale.
 - (2) Right of first refusal of purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town of Marion's right of first refusal for a period not less than 180 days to purchase the property or assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.
 - (3) The SPGA shall require, as a condition for special permit approval under this bylaw, that the deeds to the affordable housing unit contain a restriction requiring that any subsequent renting or leasing of said affordable housing unit shall not exceed the maximum rental price as determined by the DHCD for affordability within the Town of Marion.
 - (4) The SPGA shall require, as a condition for special permit approval under this bylaw, that the applicant comply with the mandatory set-asides and accompanying deed restrictions of affordability. The Building Commissioner shall not issue any building permit for any unit(s) until the special permit and deed restriction are recorded at the Plymouth County Registry of Deeds or the Land Court.
- L. Donation of land and/or fees in lieu of the affordable housing unit provision. As an alternative to the requirements of Subsection E, an applicant may contribute a fee or land to the Marion Housing Trust Fund in lieu of constructing and offering affordable units within the locus of the proposed development or off site.
- (1) Calculation of fees in lieu of units. The applicant for development subject to this bylaw may pay fees in lieu of the construction or provision of affordable units in the amount of \$200,000 per unit. For example, if the applicant is required to construct two affordable income units, he/she may opt to pay \$400,000 in lieu of constructing or providing the units. ~~Unless and until adjusted by Town Meeting, the fee in lieu of the construction of affordable units shall increase 3% annually commencing on April 29, 2004.~~ The fee in lieu of construction of affordable units shall be reviewed annually by the Board of Selectmen on or before July 1 and adjusted to reflect the current cost of constructing an affordable dwelling unit. [Amended 11-3-2003 STM by Art. S18]
 - (2) Schedule of fees in lieu of payments. Fees in lieu of payments shall be made according to the schedule set forth in Subsection F(3) above.
 - (3) An applicant may offer, and the SPGA, in concert with the Board of Selectmen, may accept, donations of land in fee simple, on or off site, that the SPGA determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set aside of affordable units. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

§ 230-8.13. Municipal Solar Overlay District. [Added 5-13-2013 ATM by Art. 31]

- A. Purpose: bylaw objectives. The purpose of the Municipal Solar Overlay District is to identify and include on the Marion Zoning Map, with corresponding inclusion in the Zoning Bylaw, Town-owned real property on which the installation of ~~the~~ solar PV systems without the need for a special permit would be compatible and consistent with the Marion Zoning Bylaw.

- B. Definition. For the purpose of this bylaw and without intending to limit the interpretation of the same, "ground-mounted solar PV systems" shall include any engineered and constructed structure that converts sunlight into electrical energy through an array of solar panels that connect to a building's electrical system and/or the electrical grid.
- C. Overlay district locations. The Municipal Solar Overlay District shall be defined as and include Lots 8, 9, 9C, and 9D as shown on Marion Assessor's Map 24. The provisions of this district shall be considered superimposed on and over the Zoning Map of the Town of Marion and shall hereinafter be referred to as the "Municipal Solar Overlay District." The uses and structures permitted in the Municipal Solar Overlay District shall be considered an addition to, and not conflicting with, the uses and structures permitted by the Zoning Bylaw and Zoning Map.
- D. Allowable uses and structures. In addition to all other permitted and lawful uses and structures, within the Municipal Solar Overlay District, the Town of Marion shall be permitted to construct, or have others construct, ground-mounted solar PV systems, provided that ~~the~~ building permit has been issued pursuant to the Massachusetts Building Code. No special permit shall be required for construction of ground-mounted solar PV systems within the Municipal Solar Overlay District. Submission to the Planning Board for minor site plan review and approval pursuant to § 230-9.1A of the Zoning Bylaw shall be as required by this bylaw (§ 230-8.13, et seq.), regardless of the minimum threshold requirements found in § 230-9.1A. In addition, a solar PV installation on the closed landfill within the Municipal Solar Overlay District also requires a MassDEP post-closure permit according to the MassDEP's Landfill Post-Closure Use Permitting Guidelines. All the provisions of the general or special laws relating to the use, lease and disposal of municipally owned property shall apply to any use or application of the Municipal Solar Overlay District. -

ARTICLE IX

Site Plan Review and Approval **[Added 3-28-1989 STM by Art. 2]**

§ 230-9.1. Applicability; minor and major site plan review. [Amended 6-18-1990 STM by Art. 15; 3-10-1997 STM by Art. S12]

- A. No permit to build, alter or expand any nonresidential building, structure or use of land in any district where such construction shall exceed a total gross floor areas of 500 square feet or require changes or alterations to a parking area shall be issued by the Building Commissioner until he or she shall have received from the Planning Board a written statement of site plan approval by the Planning Board in accordance with the provisions of this section. A building wholly or partially destroyed may be rebuilt without recourse to this section if rebuilt without change to the building footprint or the square footage of usable space.
 - (1) Pursuant to the provisions of § 230-2.1, all new uses and changes of use require a use permit issued by the Building Commissioner.
 - (2) The Building Commissioner shall enforce the fulfillment of any conditions which the Planning Board may impose. This section shall not include signs or normal maintenance.
- B. Minor site plan review. Applications for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of 500 square feet but not exceed a total gross floor area of 2,000 square feet, or will not generate the need for more than 10 parking spaces, shall require minor site plan review. For the purposes of computing the total gross floor area, the Planning Board shall aggregate all such applications made within the five previous calendar years. The following information shall constitute the submittal ~~the submittal~~ of a minor site plan for review:

- (1) All of the information set forth in § 230-9.11A; provided, however, that the scale of the site plan may be one inch equals 80 feet; the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey, and the plan need not provide the information set forth in Subsection A(11) of said section.
 - (2) All of the information set forth in § 230-9.11B.
 - (3) Such additional information as the Board shall require to determine compliance with the standards set forth in § 230-9.4.
- C. Major site plan review. Applications for permits to build, alter, or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of 2,000 square feet, or generate the need for more than 10 parking spaces, shall require major site plan review. For the purposes of computing the total gross floor area, the Planning Board shall aggregate all such applications made within the five previous calendar years. The following information shall constitute the submittal of a major site plan for review: all of the information set forth in §§ [230-9.4 and 230-9.11](#) in ~~their~~ its entirety and §§ 230-9.6 and 230-9.12, if applicable.

§ 230-9.2. Board of Selectmen or Board of Appeals referrals. [Amended 3-10-1997 STM by Art. S12]

When in accordance with § 230-7.1B of this bylaw, the Board of Selectmen or the Board of Appeals shall refer an application for a special permit to the Planning Board for review and comment, the Planning Board's written report to the Board of Selectmen or the Board of Appeals shall include, but not be limited to, all of the findings and determinations the Planning Board would make in reviewing a site plan under this section to the extent they are applicable to the information contained in the application for special permit. To the extent feasible, the Board of Appeals and the Board of Selectmen shall coordinate the submittal requirements for special permits under their jurisdiction with the Planning Board's submittal requirements for minor and major site plans, as set forth herein.

§ 230-9.3. Grounds for denial of application.

The Planning Board may reject an application for site plan approval for the following reasons:

- A. Noncompliance with Zoning Bylaw.
- B. Incomplete application, including the application form, the accompanying site plan maps and supporting documentation, or the application fee as requested by the Planning Board.
- C. The site plan is so intrusive on the needs of the public in one regulated aspect or another that rejection by the Board would be tenable because no form of reasonable conditions can be devised to satisfy the problem with the plan. [Amended 3-10-1997 STM by Art. S12]

§ 230-9.4. Standards for review. [Amended 6-18-1990 STM by Art. 15; 4-22-1996 ATM by Art. 29; 3-10-1997 STM by Art. S12]

- A. Site plan approval is designed to provide a balance between a landowner's rights to use his land with the corresponding rights of abutters and neighboring landowners to live or operate businesses without undue disturbance (e.g., noise, congestion, smoke, dust, odor, glare, stormwater runoff, etc.).
- B. Additional objectives include the preservation of the natural resources of the Town; the creation of a better and safer living environment and the enhancement of Marion's man-made resources, including the Town's architectural and historic heritage.

- C. Site plan approval shall be granted upon a determination by the Planning Board that the following considerations have been reasonably addressed by the applicant. The Planning Board may impose reasonable conditions, at the expense of the applicant, to secure this result. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations.
- (1) New building construction or other alteration shall be designed in the site plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points and other aspects of the development, so as to:
 - (a) Minimize the volume of cut and fill, the number of removed trees six ~~inches~~inches' caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion and threat of air and water pollution;
 - (b) Maximize pedestrian and vehicular safety both on the site and egressing from it;
 - (c) Minimize obstruction of scenic views from publicly accessible locations;
 - (d) Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
 - (e) Minimize glare from headlights through plantings or other screening; minimize lighting intrusion through use of such devices as cut-off luminaries confining direct rays to the site, with fixture mounting not higher than 20 feet;
 - (f) Minimize unreasonable departure from the character and scale of building in the vicinity, as viewed from public ways;
 - (g) Minimize contamination of groundwater from ~~onsite~~on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances.
 - (2) All buildings in the layout and design shall be an integral part of the development and have convenient access to and from adjacent uses and roadways.
 - (3) Individual buildings shall be related to each other in design, masses, materials, placement, and connections to provide a visually integrated development. Buildings should be separated by a minimum of 30 feet or the height of the taller building, whichever is greater.
 - (4) Treatment of the sides and rear of all buildings shall be comparable in amenities and appearance to the treatment given street frontages of these same buildings.
 - (5) All buildings shall be oriented so as to ~~insure~~ensure adequate light and air exposure to the rooms within.
 - (6) All buildings shall be arranged so as to avoid undue exposure to concentrated parking facilities wherever possible, and shall be oriented to preserve visual and audible privacy between adjacent buildings.
 - (7) All buildings shall be arranged to be accessible to emergency vehicles.
 - (8) All areas proposed to satisfy usable open space requirements shall be of a size, shape, soil characteristic, and slope suitable for the intended use.

- (9) Where common open space is to be provided, the organization proposed to own and maintain the open space shall include provisions which recognize the right of the Town of Marion to enforce the maintenance of common open space in reasonable order and condition and to assess property owners for the cost of such maintenance in the failure of the organization to maintain the common open space. Such assessment shall become a lien on the properties.

§ 230-9.5. Pre-submission conference. [Amended 6-18-1990 STM by Art. 15]

- A. Before submitting a site plan, an applicant shall meet informally with the Planning Board at a public meeting to review the information the applicant must submit and determine the required filing fee. At this meeting, the applicant shall request a written determination by the Planning Board of the amount of the filing fee and the need for and/or scope of an environmental assessment as described in § 230-9.6 below. The Planning Board shall advise the applicant in writing of the amount of the filing fee, the need for and/or scope of an environmental assessment, and any exceptions with respect to the site plan details under § 230-9.11 within 22 days of the ~~presubmission~~pre-submission meeting. Any technical services required to assist the Planning Board in preparing its written response shall be included as part of the application fee under § 230-9.15. [Amended 4-29-2003 STM by Art. S5]
- B. The applicant shall also notify the Tree Warden, ~~Building Commissioner~~ and Building Commissioner prior to any plan submission. [Added 5-16-2006 ATM by Art. 21]
- C. The Planning Board may, taking into consideration the size and impact of the proposed project, waive any of the requirements in this section.

§ 230-9.6. Environmental assessment scope.

- A. An environmental assessment shall be prepared in all applications for site plan review within the Water Supply Protection District. An environmental assessment shall be prepared in support of all other development requiring site plan review, except that the Planning Board, as part of a ~~presubmission~~pre-submission conference as described in § 230-9.5 above, may decide that the project is not of a size or nature requiring an environmental assessment or may scope an environmental assessment focusing on one or more significant impacts and advise the applicant of its decision in writing within 14 days of the ~~presubmission~~pre-submission conference. The purpose of the environmental assessment is to assist the Planning Board in determining if the standards for review can be achieved.
- B. An applicant is encouraged to submit the suggested outline of an environmental assessment for review by the Planning Board during a ~~presubmission~~pre-submission meeting.
- C. The environmental assessment, except as may be modified by the Planning Board following a ~~presubmission~~pre-submission conference meeting, must be prepared by recognized professionals; the name, education, disciplines and experience of the professionals shall be included in the environmental assessment report.
- D. The environmental assessment shall include an evaluation of all influences, both positive and negative, which can be expected to impact the natural and man-made environment in the vicinity of the proposed project. Both direct and indirect impacts shall be evaluated.
- E. Methods designed to mitigate, and, where appropriate, monitor the impacts shall be proposed; the party responsible for implementing the mitigating measures shall be identified.
- F. Where applicable and where acceptable to the Planning Board, an environmental impact report scoped and submitted in compliance with the Massachusetts Environmental Policy Act, may be submitted in satisfaction of all or portions of the requirements under this section.

- G. The environmental assessment should assemble relevant material facts, identify the essential issues to be decided, evaluate all mitigating measures and reasonable alternatives, and make findings and conclusions. It should be concise and analytical, not encyclopedic.
- H. The following elements of a typical environmental assessment are identified to provide guidance and assistance to site plan applicants and the Planning Board in scoping an environmental assessment:
 - (1) A concise description of the proposed project, including its purposes and need.
 - (2) A concise description of the environmental setting of the area to be affected; sufficient to understand effects of the proposed project and alternatives.
 - (3) A statement of the important environmental impacts of the proposed project, including short- and long-term effects, and typical associated environmental effects.
 - (4) An identification and brief discussion of any adverse environmental effects which cannot be avoided if the proposed project is constructed.
 - (5) A description and evaluation of reasonable alternatives to the project which would achieve the same objectives.
 - (6) An identification of any irreversible and irretrievable commitments of resources which would be associated with the project should it be constructed.
 - (7) A description of mitigation measures to minimize the adverse environmental impacts.
 - (8) A description of any growth-inducing aspects of the project where applicable and significant.
 - (9) A list of any underlying studies, reports, and other information obtained and considered in preparing the environmental assessment.

§ 230-9.7. Application filing; Site Plan Review Manual.

- A. An applicant for site plan approval shall file with the Planning Board copies of an application and a site plan, and a filing fee as required by the Planning Board. The Planning Board shall acknowledge receipt of the application and site plan by providing the applicant a form on which the date of receipt is noted. Concurrently, the applicant shall file a copy of the application and site plan with the Town Clerk. Such application and site plan shall include the elements on which the Planning Board is to make findings and determinations as provided in this section, and shall also include information as to the nature and extent of the proposed use of buildings, and such further information as the Planning Board shall reasonably require by rule or regulation in a Site Plan Review Manual. Applications for a building permit shall not be filed prior to having received site plan approval under the provisions of this bylaw. In subsequent applications concerning the same subject matter, the Planning Board may waive the filing of plans and documents to the extent they duplicate those previously filed.
- B. The Planning Board may, following a duly advertised public hearing, adopt or amend the Site Plan Review Manual to provide further guidance to both applicants and the Planning Board in the preparation, review and approval of site plan approval applications. Copies of the adopted manual shall be filed with the Town Clerk.

§ 230-9.8. Relationship to Subdivision Regulations.

Site plan approval issued hereunder by the Planning Board shall not be a substitute for compliance with the Rules and Regulations Governing the Subdivision of Land in Marion or the Subdivision ~~Aet~~Control Law as they may apply to an application submitted hereunder. The Planning Board, by granting site plan

approval, is not obligated to approve any definitive plan nor reduce any time periods for the Planning Board's consideration under the Subdivision Control ~~AetLaw~~. In order to facilitate processing, the Planning Board may accept a combined plan and application which shall satisfy this section, the Rules and Regulations Governing the Subdivision of Land in Marion, and the Subdivision Control ~~AetLaw~~.

§ 230-9.9. Referrals to Town boards and commissions.

- A. The Planning Board shall, within five days of receipt of the site plan application, transmit two copies of the application and site plan to the following Town committees, departments, commissions, and boards for review and comment: Conservation Commission, Board of Health, public works administration, Marine Resources Commission, Fire Chief, and Police Chief. Other committees, departments and commissions may be requested to review site plan applications and site plans if the Planning Board feels such review will help in ~~their~~its deliberations.
- B. If the Planning Board determines that the site plan application is not complete, it may so advise the applicant to avoid delays to the applicant due to the anticipated disapproval of an incomplete submission.
- C. The Conservation Commission and other agencies designated by the Planning Board shall consider the same and submit a final report thereon with recommendations to the Planning Board. The Conservation Commission shall review the application with particular reference to the Wetlands Protection Act and shall recommend as to the advisability of granting the site plan approval and as to the restrictions which should be imposed upon the development as a condition of such permit.
- D. The Planning Board shall not make a finding and determination upon an application until it has received the final report of the Conservation Commission and/or other agencies designated by the Planning Board thereon, or until 21 days shall have elapsed since the transmittal of said copies of the application and site plan to the Conservation Commission and other agencies designated by the Planning Board without such report being submitted. Failure of a commission or agency to submit a report within the allotted time shall be interpreted as non-opposition to the submitted site plan.

§ 230-9.10. Procedures and decision. [Amended 6-18-1990 STM by Art. 15; 4-25-1994 STM by Art. 27; 3-10-1997 STM by Art. S12; 11-13-2000 STM by Art. S5; 4-29-2003 STM by Art. S7; 11-3-2003 STM by Art. S20]

- A. Uses as of right. For uses "as of right," the Planning Board shall provide notice of its decision on major and minor site plans to the applicant within 60 days of its receipt of the application. That period may be extended by written request of the applicant. The decision of the Planning Board shall be based on a majority of those present and shall be in writing. The Building Commissioner shall not issue a building permit without the written approval of the site plan by the Planning Board, unless 60 days have elapsed from the date of the submittal of the site plan without action taken by the Planning Board.
- B. Uses available by special permit. For special permits, the Planning Board shall provide notice of its decision to the special permit granting authority within 45 days of its receipt of the application. That period may be extended by written request of the applicant. The decision of the Planning Board shall be based upon a majority of those present and shall be in writing. The Building Commissioner shall not issue a building permit without the written approval of the site plan by the Planning Board, unless 45 days have elapsed from the date of the submittal of the site plan without action taken by the Planning Board; however, no site plan review shall be required for single-family or two-family uses. Where the Planning Board approves a site plan with conditions and amendments ~~are~~ subject to a

special permit, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit by said granting authority.

C. Decision.

(1) The Planning Board may make the following determinations with regard to a site plan:

(a) The Planning Board shall approve an application if it finds that the proposed development is in conformance with this bylaw, after considering whether the proposed plan will comply, to the extent feasible, with the standards set forth in § 230-9.4. In granting approval of an application, the Planning Board may impose conditions, limitations and safeguards that shall be in writing and shall be a part of the approval; or

(b) The Planning Board may reject a site plan for the reasons set forth in § 230-9.3.

(2) In the event the Planning Board approves a site plan application under these provisions, any construction, reconstruction, substantial exterior alteration or addition shall be built or altered in conformity with any conditions, modifications and restrictions the Board shall have made in its findings and determination and as set forth in the application and site plan.

(3) No permit, or any extension, modification or renewal thereof, issued pursuant to this section shall take effect until the Town Clerk certifies that 20 days have elapsed and no appeal has been filed or that such appeal has been dismissed or denied.

D. Minor changes to approved plan. Minor changes to the approved site plan may be submitted to the Building Commissioner for approval. All requests for minor change shall, within one business day of receipt, be referred to the Planning Board ~~and which~~, at its next regular meeting, shall evaluate the proposed changes against its previous findings to determine if it is major or minor. The Planning Board shall advise the Building Commissioner of its decision within two business days of that meeting. If the change is determined to be minor by the Planning Board, the Building Commissioner is authorized to either approve or to disapprove the change. If the change is determined to be major by the Planning Board, resubmission of an application for site plan review and approval under Article IX shall be required.

E. Duration. The approval of a site plan application, or modification or amendment thereof, shall remain effective for a period of two years from the date of filing the decision with the Town Clerk, unless, prior to the expiration of the two-year period, the applicant makes substantial efforts to construct or develop in accordance with the approved site plan, or, upon a written request from the applicant, the Planning Board votes to extend the time period for a period not to exceed one additional year.

F. If use permit required. A site plan review and approval decision shall not constitute a special permit where such special permit is required to establish or undertake a use.

G. Appeals. Persons aggrieved by a site plan review decision may appeal to the Board of Appeals, pursuant to § 230-2.3B and MGL c. 40A, § 15.

§ 230-9.11. Site plan details. [Amended 6-18-1990 STM by Art. 15; 4-26-2005 ATM by Art. 33]

Each applicant shall provide 19 paper copies, or a combination of paper and downloadable electronic copies, as determined by the Planning Board, of the proposed site plan of the tract for each application for the site plan approval. Site plans shall include the following information, unless specifically waived by a vote of the Planning Board:

A. Site plan.

(1) General information.

- (a) Date of site plan and date of each subsequent revision.
- (b) The title, scale and block for the plan and the Assessors' lot and plan number of the site.
- (c) An arrow indicating North.
- (d) The name and address of the owners and/or applicant; the president and secretary, if the applicant or owner is a business entity.
- (e) The zoning boundaries and property lines within 100 feet, lot reservations, easements, rights-of-way and public grants or easements.
- (f) Public and private ways and driveways, with the name of said ways indicated on the plan.
- (g) A key showing the locus of the ~~parcels~~ parcel(s).
- (h) Existing site condition contours at intervals of two feet for slopes between 3% and 15%; five-foot intervals for slopes greater than 15%. All existing grades shall be indicated with dashed lines and finished grades shall be indicated with solid lines.
- (i) Location of existing erratics, soil types, high points, vistas, depressions, water bodies, wetlands, floodplain designations, wooded areas and major trees (twelve-inch caliper or over) and other significant existing features, including previous flood elevations of watercourses, and wetlands, as determined by survey.
- (j) Location of existing structures that shall remain and all other existing structures, such as walls, fences, culverts, bridges, as well as roadways, with spot elevations. Structures to be removed shall be indicated in dashed lines.
- (k) All structures and any significant topography within 50 feet of the property lines shall be indicated.
- (l) The acreage of the tract(s) to the nearest 1/10 of an acre shall be indicated.
- (m) A signature block for the Chairman shall be provided.
- (n) The plan shall be stamped by the engineer or surveyor who prepared the plan.
- (o) Any areas that fall within the one-hundred-year floodplain or a Velocity (VE or V) Zone shall be shown with base elevations.

(2) Buildings and structures.

- (a) The proposed uses and layout of proposed and improved structures, including square footage of each use, as well as the totals for each structure.
- (b) Elevations for all sides of proposed or improved structure.
- (c) The location of solid waste bins and containers, including screening details.
- (d) The location of all signs, existing and proposed.
- (e) Height of buildings, including relationship to existing and proposed grades and sketches, as appropriate, to indicate the visual impact on the community.
- (f) The locations, housing type and density of land use to be allocated to parts of the site to be developed.

- (3) Landscaping. A plan showing all existing natural features, trees, forest and water resources and proposed changes to these features, including size and type of plant material. Water resources shall include ponds, lakes, brooks, streams, wetlands, floodplains and drainage retention areas.
 - (4) Utilities and drainage. [Amended 5-19-2008 ATM by Art. 24]
 - (a) The location of the proposed stormwater management system components with proposed grading, pipe sizes, invert elevations, and rates of gradient shall be provided. Typical cross sections and elevation details of all stormwater management and collection system components shall also be provided.
 - (b) The design of the proposed stormwater management systems and the required stormwater management plan (SWMP) submittals for all site plans, open space development plans and flexible development plans shall comply with the Subdivision Rules and Regulations of the Planning Board and the applicable requirements of the Board of Health and the Conservation Commission.
 - (c) Pursuant to MGL c. 41, § 81R, strict compliance with the Subdivision Rules and Regulations may be waived when, in the judgment of the Planning Board, such action is in the public interest, not inconsistent with the Subdivision Control Law, and promotes public health and safety. Requests for waivers shall follow the procedures set forth in § 300-2.8 of the Subdivision Rules and Regulations.
 - (5) Traffic and parking.
 - (a) All means of vehicular access to and from the site onto any public way shall be indicated and include the size and locations of driveways and curb cuts, traffic channels, acceleration and deceleration lanes, and any additional width or any other device necessary to ease the traffic flow.
 - (b) The location and design of any off-street parking areas or loading areas, showing the size and location of bays, aisles, barriers and proposed plantings.
 - (c) The total ground coverage by structures and impervious surfaces shall be identified and measured.
 - (d) All proposed streets and profiles, including grading and cross sections showing width of roadway and locations and width of sidewalks.
 - (6) Open space — maintenance.
 - (a) The location and size of common open space.
 - (b) All proposed easements.
 - (c) The proposed screening, landscaping and planting plan, including details of types of planting.
 - (7) Illumination. The proposed location, height, direction of illumination, bulb type, power and time of proposed outdoor lighting and methods to eliminate sky glare and glare onto adjoining properties must be shown. Dark sky compliant lighting fixture shop drawings are to be submitted for review, accompanied by a point-to-point photometric analysis.
- B. Additional documents required. In addition to the site plan, the following documents shall also be required, unless waived by the Board:

- (1) Copies of all existing or proposed agreements by which private roads shall be maintained, refuse collected, snow plowed and removed, and other supplementary services shall be provided~~;~~.
- (2) The applicant shall prepare a circulation study both within the site and as it may affect the surrounding areas, including estimates of total automotive trips generated, peak~~-~~hour demand, present and anticipated traffic volumes on adjoining streets, existing street capacities and other elements which may influence and be influenced by the development.
- (3) A traffic impact study conducted as part of an environmental assessment required pursuant to this section shall consider the following:
 - (a) Analysis of roadways that may be influenced by the project. These roadways can be considered as adjacent roads and major intersections;
 - (b) The analysis shall be completed for the estimated year of completion, or, in the case of phased developments, for the first phase, with the understanding that each phase shall require an independent analysis; and
 - (c) Analytical efforts shall consider the following: safety, including accident data, sight distances, roadway conditions, etc.; capacity analysis using Transportation Research Board Report No. 209; existing volumes (traffic counting); site-generated and future traffic; and planned transportation improvements.
- (4) A copy of any covenants, deed restrictions or exceptions that are intended to cover all or any part of the tract;
- (5) All calculations necessary to determine conformance ~~by~~with bylaws and regulations;
- (6) A survey prepared by a Massachusetts licensed surveyor shall accompany the site plan and shall show the boundaries of the parcel and the limits of all proposed streets, recreation and conservation areas and other property to be dedicated to public use;
- (7) The names and addresses of all abutters; and
- (8) Such other information as may be required to show that the details of the site plan are in accordance with applicable standards of the Zoning Bylaw.

§ 230-9.12. Special provisions for phased developments.

- A. In the case of plans which call for development over a period of years, a schedule shall be included in the application showing the proposed times within which each section of the development may be started.
- B. The proponents of a phased development shall include assurances that each phase could be brought to completion in a manner which would not result in an adverse effect upon the Town as a result of termination at that point.
- C. All site plans previously approved by the Planning Board shall be submitted each time a new part or section is submitted for approval.

§ 230-9.13. Preparation of site plans. [Amended 3-10-1997 STM by Art. S12]

A. Preparation of major site plan.

- (1) A major site plan shall be prepared by a licensed engineer, landscape architect or architect for general locations except where waived by the Planning Board because of unusually simple circumstances.
- (2) For topographical and boundary survey information, the major site plan shall be signed and sealed by a licensed land surveyor.
- (3) For all elements of design, which shall include drainage, pavements, curbing, walkways, embankments, horizontal and vertical geometries, utilities and pertinent structures, drawings shall be signed by a licensed professional engineer.

B. Preparation of minor site plan. Minor site plans may be submitted without the assistance of a licensed engineer, surveyor, architect, and/or landscape architect. However, at its first meeting in review of the minor site plan, the Planning Board may instruct the applicant, in writing, to have certain details of the plan prepared in accordance with any or all of the requirements of a major site plan set forth in § 230-9.13A.

§ 230-9.14. Endorsement of site plan.

After approval by the Planning Board and subject to the satisfaction of any conditions of approval, a Mylar or linen print of all approved site plan maps shall be submitted for signature and filing; all information thereon shall be in black India ink.

§ 230-9.15. Application fee.

As part of any application for site plan review, a fee shall be required. This fee is structured to offset directly any expenses the Town or Planning Board incurs in the review of the application. The site plan review fee system is intended to encourage the applicants to submit complete, accurate and thorough applications. Such applications generally cost less to review. In such cases, these rules authorize a refund to the applicant of any unused monies on deposit.

- A. Minimum review fee deposit. A minimum deposit, in an amount established by the Planning Board, shall be submitted at the same time the application and site plan ~~is~~are submitted to the Planning Board. The minimum review fee deposit shall be submitted in check form and made out to the Town of Marion. If, prior to action on the application, the Planning Board finds that the amount of the deposit is not sufficient to cover the actual costs incurred by the Town in its review of the application, the applicant shall be required, upon written notice, to submit forthwith to cover such costs. The Planning Board shall notify the applicant of such additional amounts in writing by certified mail. Failure to submit such additional amounts shall be deemed a violation of these regulations and shall be deemed reason to deny approval of the application. If the actual costs incurred by the Town or Planning Board for the review of the application are less than the amount of the deposit, the Planning Board shall authorize that such excess amount be refunded to the applicant concurrently with Planning Board action on the site plan application.
- B. Costs covered by fee. The review fee shall be applied to all costs associated with the proper review and administration of the site plan application, including, but not limited to, staff time in administration and review of the application, costs for legal notices, advertising costs, and public hearing costs. The Planning Board is authorized to retain professional planners, registered professional engineers, architects or landscape architects, attorneys or other professional consultants

to advise the Board on any and all aspects of the site plan. The cost of the advice shall be borne by the applicant.

- C. Planning Board regulations. The Planning Board, following a public hearing, may adopt, and from time to time amend, procedures for establishing fees, including costs for in-house processing and review and the engagement of outside experts. [Amended 6-18-1990 STM by Art. 15] -

ARTICLE X

Conservation Subdivisions

[Added 3-28-1989 STM by Art. 3; amended 6-18-1990 STM by Art. 8; 6-4-1996 STM by Art. S4; 10-28-1997 STM by Art. S5; 4-26-1999 ATM by Art. 22; 10-15-2001 STM by Art. S8]

§ 230-10.1. Purpose.

The purposes of this ~~section~~article, Conservation ~~Subdivision~~Subdivisions, are:

- A. To encourage the permanent preservation of open space, agricultural and forestry land, other natural resources, including water bodies and wetlands, and historical and archeological resources;
- B. To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
- C. To protect the value of real property;
- D. To promote more sensitive siting of buildings and better overall site planning;
- E. To perpetuate the appearance of Marion's traditional New England landscape;
- F. To facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
- G. To allow for greater flexibility and creativity in the design of residential developments.

§ 230-10.2. Definitions.

The following terms shall have the following definitions for the purposes of this ~~section~~article:

CONSERVATION SUBDIVISION — A residential development in which the buildings are clustered together with variable lot ~~sized~~sizes and frontage. The land not included in the building lots is permanently preserved as open space. A conservation subdivision is the preferred form of residential development in the Town of Marion.

CONTIGUOUS OPEN SPACE — Open space suitable, in the opinion of the Planning Board, for the purposes set forth in § 230-10.12, ~~therein~~ herein. Such open space may be separated by the road(s) constructed within the conservation subdivision. Contiguous open space shall not include required yards.

TOWNHOUSE — A unit of real estate located in a single building on a single lot, where said building contains more than one but not more than four units of real estate located in one row of houses connected by common walls, and where are combined fee simple title to the unit and joint ownership in the common elements shared with other unit owners.

§ 230-10.3. Applicability.

In accordance with the following provisions, a conservation subdivision project may be created from any parcel or set of contiguous parcels held in common ownership and located entirely within the ~~Town of Marion~~Residence A, B, C or D Districts.

§ 230-10.4. Procedures.

- A. A conservation subdivision may be authorized upon the issuance of a special permit by the Planning Board. A pre-application meeting between the Planning Board and the applicant is strongly encouraged.
- B. Applicants for a conservation subdivision shall file the following with the Planning Board at the appropriate times:
 - (1) Seven copies of both a preliminary subdivision plan and a conservation subdivision sketch plan. One of the purposes of this submission is to determine the number of lots possible in the conservation subdivision.
 - (2) Seven copies of the definitive conservation subdivision plan. The definitive conservation subdivision plan shall show: location and boundaries of the site, proposed land and building uses, lot lines, location of open space, proposed grading, location and width of streets and ways, parking, landscaping, existing vegetation to be retained, water supply, drainage, proposed easements, stormwater management systems, and methods of sewage disposal. The plan shall be prepared by a team including a registered civil engineer, registered land surveyor and a registered landscape architect.
 - (3) An existing conditions plan. An existing conditions plan shall accompany the definitive conservation subdivision plan. The existing conditions plan shall depict existing topography, wetlands, water bodies and the one-hundred-year floodplain, all existing rights-of-way, easements, existing structures, location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways and cart paths. The existing conditions plan shall also show locations of soil test pits and ~~pereolations~~percolation tests with supporting documentation on test results. Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted by the bylaw.
- C. The Planning Board may also require as part of the development plan additional information necessary to make the determinations and assessments cited herein. Applicants should refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal of plans.

§ 230-10.5. Design process.

Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this design process was considered in determining the layout of proposed streets, house lots, and contiguous open space.

- A. Understanding the site. The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, any historical districts in the vicinity, and to determine the connection of these important features to each other.
- B. Evaluating site context. The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.

- C. Designating the contiguous open space. The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks. Open space shall be planned as large, contiguous areas whenever possible.
- D. Location of development areas. The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with Marion's historical development patterns. The maximum number of house lots, compatible with good design, shall abut the open space and all house lots shall have reasonable physical and visual access to the open spaces.
- E. Lot lines. The final step is simply to draw in the lot lines (if applicable).

§ 230-10.6. Modification of lot requirements.

The Planning Board encourages applicants for a conservation subdivision to modify lot size, shape, and other dimensional requirements for lots within a conservation subdivision, subject to the following limitations:

- A. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the conservation subdivision; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.
- B. At least 50% of the required side and rear yards in the district shall be maintained in the conservation subdivision.

§ 230-10.7. Basic maximum number of dwelling units.

The basic maximum number of dwelling units allowed in a conservation subdivision shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetland regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

§ 230-10.8. Types of buildings.

The conservation subdivision may consist of any combination of single-family, two-family and townhouse residential structures. A townhouse structure shall not contain more than four dwelling units. The architecture of all multifamily buildings shall be residential in character, particularly providing gable roofs, predominantly wood siding, an articulated footprint and varied facades. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

§ 230-10.9. Roads.

The principal roadway(s) serving the site shall be designed to conform to the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town of Marion. Private ways shall be adequate for the intended use and vehicular traffic and shall be forever maintained by an association of unit owners or by the applicant.

§ 230-10.10. Parking.

Each dwelling unit shall be served by two off-street parking spaces. Parking spaces in front of garages may count in this computation.

§ 230-10.11. Contiguous open space.

A minimum of 50% of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable to the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

§ 230-10.12. Permissible use of open space.

- A. Purposes. Open space shall be used solely for recreation, conservation, agriculture or forestry purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least half of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur in what areas. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.
- B. Recreation lands. Where appropriate to the topography and natural features of the site, the Planning Board may require that at least 10% of the open space or two acres (whichever is less) shall be of a shape, slope, location and condition to provide an informal field for group recreation or community gardens for the residents of the subdivision.
- C. Leaching facilities. Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants to insure that such facilities are adequately maintained by the lot owners within the development.
- D. Accessory structures. Up to 5% of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space, including parking.
- E. Wetlands. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in § 230-10.5A, above. In no case shall the percentage of contiguous open space which is wetlands exceed 50% of the tract.
- F. Underground utilities. Underground utilities to serve the conservation subdivision site may be located within the contiguous open space.

§ 230-10.13. Ownership of contiguous open space.

Ownership of contiguous open space shall be governed by the following conditions:

- A. Conveyance. The contiguous open space shall, at the developer's option and subject to the approval ~~by~~of the Planning Board, be conveyed to:

- (1) The Town of Marion, to be placed under the care, custody and control of the Open Space Acquisition Committee or its successor, or the Conservation Commission;
 - (2) A nonprofit organization acceptable to the Town, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
 - (3) A corporation or trust owned jointly or in common by the owners of lots within the conservation subdivision. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners' association is capable of assuming such responsibility. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust, which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town of Marion to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the Town an easement for this purpose. In such event, the Town shall first provide 14 days' written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the Town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.
- B. Permanent restriction. In any case where open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction in accordance with MGL c. 184, § 31, approved by the Planning Board and the Board of Selectmen/Town Counsel and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to insure that such land shall be kept in an open or natural state and not be built upon or developed for accessory uses. Restrictions shall provide for periodic inspection of the open space by the Town. A management plan may be required by the Planning Board, which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.
- C. Encumbrances. All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.
- D. Monumentation. Where the boundaries of the open space are not readily observable in the field, the Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space.

§ 230-10.14. Buffer areas.

A buffer area of 100 feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement for one of the following situations:

- A. Where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least 50 feet in depth which may include such restricted land area within such buffer area calculation;
- B. Where the land abutting the site is held by the Town for conservation or recreation purposes;
- C. The Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

§ 230-10.15. Design requirements.

The location of open space provided through this bylaw shall be consistent with the policies contained in the Local Comprehensive Plan and the Open Space and Recreation Plan of the Town. The following design requirements shall apply to open space and lots provided through this bylaw:

- A. Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
- B. Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forest land and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as coastal and inland floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.
- C. Open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.
- D. Where the proposed development abuts or includes a body of water or a wetland, these areas and the one-hundred-foot buffer to such areas shall be incorporated into the open space. Where it is appropriate, reasonable access shall be provided to shorelines.
- E. The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.
- F. Open space shall be provided with adequate access, by a strip of land at least 20 feet wide, suitable for a footpath, from one or more streets in the development.
- G. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections shall be provided where appropriate.

§ 230-10.16. Drainage.

Stormwater management shall be consistent with the requirements for subdivisions set forth in the rules and regulations of the Planning Board: and shall comply with the requirements of the current edition of the Massachusetts Stormwater Management Handbook.

§ 230-10.17. Decision on application.

The Planning Board may approve, approve with conditions, or deny an application for a conservation subdivision after determining whether the conservation subdivision better promotes the purposes of § 230-10.1 of this Conservation Subdivision Bylaw than would a conventional subdivision development of the same locus.

§ 230-10.18. Relation to other requirements.

The submittals and permits of this ~~section~~article shall be in addition to any other requirements of the Subdivision Control Law, or any other provisions of this Zoning Bylaw.

§ 230-10.19. Severability.

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of Marion's Zoning Bylaws.

ARTICLE XI

Definitions

[Added 4-4-1989 STM by Art. 11; amended 6-18-1990 STM by Arts. 2, 9, 15; 4-25-1994 ATM by Art. 28; 3-10-1997 STM by Arts. S8, S9, S10, S17; 4-26-1999 ATM by Arts. 19, 21; 10-25-1999 STM by Art. S3; 11-13-2000 STM by Art. S1; 4-22-2002 ATM by Art. 21; 4-29-2003 STM by Art. S3]

§ 230-11.1. Word usage.

In this bylaw, certain terms and words, unless a contrary meaning is required by the context, or is specifically prescribed, shall have the ~~meaning~~meanings given herein. Words applying to the masculine gender shall apply to the feminine gender. Words used in the present tense include the future. The words "used" and "occupied" include the words "designed," "arranged," "intended" or "offered to be used or occupied." The words "building," "structure," "lot," "land" or "premises" shall be construed as though followed by the words "or any portion thereof." The word "shall" is always mandatory and not merely directory. The word "constructed" shall include the words "built," "enlarged," "erected," "altered," "moved" and "placed." The word "person" includes a corporation or partnership, as well as an individual. Terms used in this bylaw shall have the same meanings as ascribed to them in the building code unless the context of usage in this bylaw clearly indicates another meaning.

§ 230-11.2. Terms defined.

As used in this bylaw, the following terms shall have the meanings indicated:

ACCESSORY APARTMENT — A separate, complete dwelling unit which is:

- A. Contained substantially within the structure of a one-family dwelling unit, is served by a separate entry/exit and can be isolated from the principal one-family dwelling unit; or
- B. Contained entirely within an accessory building located on the same lot as a one-family dwelling.

ACCESSORY STRUCTURE — See "structure, accessory."

ACCESSORY USE — See "use, accessory."

ACRE — The area of land to be equal to 43,560 square feet, as measured by acceptable surveying practices.

ADULT BOOKSTORE — An establishment having as a substantial or significant portion of its stock-in-trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT CABARET — A nightclub, bar, restaurant, tavern, dance hall, or similar commercial establishment which regularly features persons or entertainers who appear in a state of nudity, or live performances which are distinguished or characterized by nudity, sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT DAY CARE — A facility, whether principal or accessory, providing nonresidential day care to adults over the age of 16. Not more than 15 such persons shall be served at an accessory facility.

ADULT MOTION-~~PICTURE~~ THEATER — An enclosed building or any portion thereof used for presenting material (motion-~~picture~~ films, videocassettes, cable television, slides or any other such visual

media) distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT PARAPHERNALIA STORE — An establishment having as a substantial or significant portion of its stock devices, object, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT USE — Adult bookstores, adult cabarets, adult motion-picture theaters, adult paraphernalia stores, and adult video stores as defined ~~below:~~herein.

ADULT VIDEO STORE — An establishment having as a substantial or significant portion of its stock-in-trade for sale or rent motion-~~picture~~ films, ~~video cassettes~~videocassettes, DVDs, and similar audio/visual media, which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ALTERATION — Any construction, reconstruction or other action resulting in a change of the structural parts or height, number of stories, size, use or location of a building or other structure.

ASSISTED-~~LIVING~~ FACILITY — A structure or structures containing dwelling units for persons in need of assistance with activities of daily living, as defined and regulated by Chapter 19D of the General Laws.

BASEMENT — A story partly underground but having at least 1/2 of its height above the average level of the adjoining ground. A basement shall be counted in determining the floor area of a building.

BED-AND-BREAKFAST — A private owner-~~occupied~~ residence in which lodging and the breakfast meal are offered to transients for a fee.

BODY ART PARLOR OR STUDIO — A facility where tattoos, body piercing or other forms of body decoration are provided for a fee or for any other type of compensation.

BUFFER or BUFFER STRIP — An area within a site which is adjacent to or parallel with the property line, consisting of a continuous strip, except required vehicle or pedestrian access points, of existing vegetation or of vegetation created by the use of trees or shrubs, designed to minimize intrusion of dirt, dust, litter, noise, glare from motor vehicle headlights, artificial lights (including ambient glare), or view of signs, unsightly buildings or parking lots.

BUILDING — A structure, or portion thereof, either temporary or permanent, having a roof or other covering forming a structure for the shelter of persons, animals and property of any kind; no trailer or mobile home shall be ~~uses~~used as a building; ~~and the term "building" shall be construed, except as if following permitted by the words "or portion thereof".~~ § 230-6.7 of this chapter and MGL c. 40A, § 3.

BUILDING CODE — The State Building Code of the Commonwealth of Massachusetts, as the same may be amended from time to time. ~~Terms used in this Bylaw shall have the same meaning as ascribed to them in the building code unless the context of usage in this Bylaw clearly indicates another meaning.~~

~~**BUILDING HEIGHT** — Measured as the vertical distance from the mean natural grade on the street side(s); and, if not abutting a street, from the mean natural ground level along its front to the cornice of the building.~~

BUSINESS OR PROFESSIONAL OFFICE — A building or part thereof, for the transaction of business or the provision of services, exclusive of the receipt, sale, storage, or processing of merchandise.

CHANGE OF USE — See "use, change of." See also, ~~Bylaw~~ § 230-9.1.

CHILD-~~CARE~~ FACILITY — A day-care center or school-age child care program, as those terms are defined in MGL c. ~~28A, s. 915D,~~ § 1A.

CLUB, NONPROFIT — Buildings, structures and premises used by a nonprofit social or civic organization as defined by MGL c. 180 or by an organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities occurring in said building or structures or on said premises, except as may be required generally for the membership and purposes of such organization. (See § 230-4.2D, Recreational Uses.)

COMMERCIAL GREENHOUSE — A facility on a parcel with less than five acres for retail sale of plants and related products which are raised on and/or off the premises.

COMMERCIAL RECREATION, INDOOR — A structure for recreational, social or amusement purposes, including all connected rooms or space with a common means of egress and entrance, which may include as an accessory use the consumption of food and drink. Indoor commercial recreation shall include theaters, concert halls, dance halls, skating rinks, bowling alleys, health clubs, dance studios, or other commercial recreational centers conducted for or not for profit.

COMMERCIAL RECREATION, OUTDOOR — A lot or combination of lots used for recreational, social, or amusement activities. This definition shall include: drive-in theater, golf course/driving range, bathing beach, sports club, horseback riding stable, boathouse, game preserve, marina or other commercial recreation carried on in whole or in part outdoors, except those activities more specifically designated in this bylaw. (See § 230-4.2D, Recreational Uses.)

COMMON OPEN SPACE — A parcel or parcels of land or an area of water, or a combination of land and water within the site designated and intended for the use and enjoyment of residents ~~of a Conservation Subdivision.~~ Common open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents ~~of the Conservation Subdivision.~~

CONSERVATION SUBDIVISION — An option as defined in Article X of the Marion Zoning Bylaw, which permits an applicant to build single-family dwellings with reduced lot area and frontage requirements designed to create a development in which the buildings and accessory uses are clustered together into one or more groups with adjacent open land.

CONTRACTOR'S YARD — Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment. (See § 230-4.2K, Miscellaneous Commercial Uses.)

COOKING FACILITIES — Any facilities (including without limitation a hot plate, microwave or portable oven, but not including an outdoor grill) which ~~permits~~permit the occupant to prepare meals in the building on a regular basis.

DRIVE-IN OR DRIVE-THROUGH WINDOW — Any window or similar feature at a facility, except restaurants, designed to serve persons while situated in a motor vehicle.

DRIVEWAY — An improved access (other than a street) connecting between a way or a street and one or more parking or loading spaces.

DWELLING — A building or part thereof designed, erected and used for continuous and permanent habitation for one or more families or individuals. A dwelling does not include a vessel.

DWELLING UNIT — A portion of a building occupied or suitable for occupancy as a residence and arranged for use of one or more individuals living as a single housekeeping unit with its own cooking, living, sanitary, and sleeping facilities, but not including trailers or mobile homes, however mounted, or commercial accommodations offered for periodic occupancy.

EDUCATIONAL USE (EXEMPT) — See "use, educational."

ENVIRONMENTAL ASSESSMENT — A concise report which accomplishes the following: evaluates the positive and negative, and direct and indirect impact of a development project on the natural and man-made environment; and proposes reasonable measures to mitigate impacts.

ESSENTIAL SERVICES — Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems, whether underground or ~~overhand~~overhead, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

EXISTING ESTATE DWELLING STRUCTURE — A structure originally designed for seasonal occupancy which was constructed prior to January 1, 1960, and which has a gross floor area of 3,000 square feet or more, exclusive of basements or cellars.

FAMILY DAY CARE, LARGE OR SMALL — Any private residence operating a facility as defined in MGL c. 28A, § 9. (See § 230-4.2M, Accessory Uses.)

FEMA — The Federal Emergency Management Agency of the United States Government. This agency administers the National Flood Insurance Program and the Flood Insurance ~~Rate~~Rate Maps.

FLOOR AREA RATIO — The ratio of the gross floor area of the building or buildings on one lot to the total area of the lot.

GENERAL SERVICE ESTABLISHMENT — A facility providing general services such as appliance or equipment repairs, furniture or upholstery repairs, and offices for trades or crafts, but excluding motor vehicle services of any kind.

GROSS FLOOR AREA — The sum of the horizontal areas of the floors of a building or several buildings on the same lot measured from the exterior face of exterior walls, or from the center line of the wall separating two buildings, not including any space where the floor-to-ceiling height is less than seven feet three inches.

GROUNDWATER — Water beneath the surface of the ground whether or not flowing through known and definite channels.

GROUNDWATER RECHARGE AREA — That portion of the drainage basin where water enters the saturated zone and the net flow of groundwater is directed from the saturated area to an aquifer.

HAZARDOUS OR TOXIC MATERIAL — A material which is hazardous to human health or to the environment, as defined by the U.S. Environmental Protection Agency and under 40 CMR 250 and the regulations of the Massachusetts Hazardous Waste Act, MGL c. 21, § 1.

HOME OCCUPATION — The use of up to 25% of the floor space in a dwelling for customary home occupations conducted by a resident occupant, such as dressmaking, candy making, or for the practice by a resident of a recognized profession or craft. Also permitted as a home occupation is the use of to 2,000 square feet of a lot, including an accessory building thereon, in connection with a trade by a resident carpenter, electrician, painter, plumber, or any other artisan, provided that no manufacturing or business use requiring substantially continuous employment be carried on. Also permitted as a home occupation is a farm, market garden, nursery, or greenhouse and the sale of products, the major portion of which are grown on the premises.

HOMEOWNERS' ASSOCIATION — A corporation or trust owned or to be owned by the owners of lots or residential units within a site approved for a conservation subdivision or open space development, which

entity shall hold the title to open land and which is responsible for the costs and maintenance of said open land and any other facilities to be held in common.

HOUSING, AFFORDABLE — Housing for people of low or moderate income which is constructed, rehabilitated, remodeled and sold, leased or rented by the Town of Marion, a local housing commission or authority, or by any other public agency, nonprofit corporation, limited-dividend corporation or partnership or cooperative, the construction, remodeling, financing, sale, lease or rental of which housing is regulated and financially assisted by agencies of the government of the United States ~~or~~for the Commonwealth of Massachusetts under programs the purpose ~~is~~of which is to provide housing for people of low or moderate income. For the purposes of this ~~paragraph~~definition, the terms "low income," "moderate income" and "limited income" shall have the meanings defined in the programs or laws administered by such agencies.

IMPERVIOUS SURFACE — A surface which has been compacted or covered with a layer of material so that it is, or may become, highly resistant to infiltration by water. Semi-impervious surfaces such as compacted clay, gravel and other materials which may become compacted over time, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots and other similar structures and materials, shall be considered to be impervious.

LIGHT MANUFACTURING — Fabrication, assembly, processing, finishing work or packaging.

LOT — A single area of land in one ownership throughout defined by metes and bounds or boundary lines as shown in a recorded deed or on a recorded plan.

LOT AREA — The horizontal area of the lot, exclusive of any area in a public or private way open to public usage.

~~LOT~~**LOT, FRONTAGE** — That boundary of a lot coinciding with the street line, being an unbroken distance along a way currently maintained by the Town, county, state, or along ways shown on the definitive plans of approved subdivisions, through which actual access to the potential building site shall be required. Lot frontage shall be measured continuously along one street line between side lot lines, or, in the case of corner lots, between one side lot line and the midpoint of the corner.

LOT LINE, FRONT — That property line which establishes frontage on a way.

LOT LINE, REAR — That property line which is farthest from and most nearly parallel to the front lot line. All other lot lines are side lot lines. Triangular and irregularly shaped lot lines may have no rear lot line.

LOT LINE, SIDE — Any lot line not defined as a front or rear lot line.

MAJOR COMMERCIAL PROJECT — Any commercial use or combination of commercial uses set forth in the Table of Principal Uses under the heading "G. Retail Uses" with a gross floor area of more than 5,000 square feet.

MARINA — A facility which provides dockage or berthing for more than five vessels and may also provide facilities for the servicing of vessels. Dockominiums, where the berths are individually owned, shall be included with the definition of a marina.

MARION WATERS — All waters within the geographic bounds of the Town of Marion, including ocean waters along the coastal bounds of the Town.

MAXIMUM LOT COVERAGE — Includes the gross ground floor area of all buildings and all impervious surfaces.

MEAN HIGH WATER — The line where the arithmetic mean of the high water heights observed over a specific nineteen-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be

determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

MEDICAL OFFICE OR CLINIC — A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

MOTOR VEHICLE BODY REPAIR — An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies. Such establishment does not include the storage of vehicles for the cannibalization of parts.

MOTOR VEHICLE GENERAL REPAIR — Premises for the servicing and repair of autos, but not to include retail fuel sales. Such premises do not include establishments for motor vehicle body repair or motor vehicle junkyards or graveyards. (See § 230-4.2I, Motor Vehicle Related Uses.)

MOTOR VEHICLE JUNKYARD OR GRAVEYARD — The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials, or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof.

MOTOR VEHICLE SERVICE STATION — Premises designed for the supplying of motor vehicle fuel, and which may also provide oil, lubrication, or minor repair services. Washing shall be permitted only as an incidental or subordinate use. Not included in this definition are services designed for automobile body repair, painting or major vehicle repair. (See § 230-4.2I, Motor Vehicle Related Uses.)

MULTIFAMILY USE — Two or more dwelling units on a single lot, including any mix of single-family, two-family, or multifamily structures, whether or not attached, and regardless of form of tenure.

MUNICIPAL FACILITIES — Facilities owned or operated by the Town of Marion or facilities licensed by the Town to other entities.

NONEXEMPT ROADSIDE FARM STAND — Facility for the sale of produce, wine, other edible farm products, flowers, fireplace wood, preserves, dairy and similar products on property not exempted by MGL c. 40A, § 3. The footprint of such facility shall be less than 100 square feet for the sale of produce, flowers and firewood.

NURSERY — A facility on a parcel with less than five acres for retail sale of trees, shrubs, plants and related products which are raised on and off the premises.

NURSING OR CONVALESCENT HOME — Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire. (See § 230-4.2K, Miscellaneous Commercial Uses.)

PARKING SPACE (HANDICAPPED) — An area, except for residences, suitable for parking a car, having adequate access for entry and exit while other adjacent parking spaces are occupied and one which complies with the standard set forth in 521 CMR 23.

PARKING SPACE (NON-HANDICAPPED) — An area measuring at least nine feet by 18 feet, suitable for parking a car, having adequate access for entry and exit while other adjacent parking spaces are occupied and one which complies with the standard set forth in 521 CMR 23.

PERSONAL KENNEL — A facility on a parcel with more than five acres specifically used in the breeding, raising and training of dogs owned by the property owner.

PERSONAL SERVICE ESTABLISHMENT — A facility providing personal services such as a hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, and the like.

PIER, ACCESSORY — A pier serving as an accessory to a single-family residence and which is located on the same lot as the residence.

PIER, ASSOCIATION — A pier used exclusively for noncommercial purposes by an association of boat owners.

PIER, COMMERCIAL — A pier available or used for commercial purposes.

RESEARCH LABORATORY — Buildings, structures or parts thereof constructed, altered or used for the following purposes: (1) general and technical office, nonmedical; (2) research laboratory engaged in research, experimental and testing activities, including but not limited to the fields of biology, chemistry, electronics, engineering, geology, medicine and physics, provided that no recombinant DNA research or technology is involved.

RESTAURANT — A building or portion thereof containing tables and/or booths for at least 2/3 of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in areas designated for dining purposes, which are adjunct to the main indoor restaurant facility. The term "restaurant" shall not include "fast-food restaurant" or "drive-in restaurant."

RESTAURANT, DRIVE-IN — A restaurant or fast-food restaurant with a window designed to serve people in motor vehicles.

RESTAURANT, FAST-FOOD — An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption on or off the premises, with food ordering at a counter, rather than at a table.

RESTAURANT, OUTDOOR — An establishment serving food at tables or at counters in which more than 50% of the seats are out of doors, such as an open porch, deck, patio or on the grounds.

RETAIL, GENERAL — A facility selling goods but not specifically listed in § 230-4.2, the Table of Use Regulations, and less than 5,000 square feet of gross floor area.

ROOMING HOUSE — A dwelling in which the person resident therein provides sleeping accommodations for not more than four paying guests who are not provided with meals or individual or shared cooking facilities.

SIGN — Any temporary or permanent lettering, word, numeral, billboard, pictorial representation, display, emblem, trademark, device, banner, pennant, insignia or other figure or similar character, located outdoors, whether constituting a structure or any part thereof, or attached, painted on, or in any other manner represented on a building or other structure, and which is used to announce, direct, attract, advertise or promote.

SIGN, ACCESSORY — Any sign relating to an allowed accessory use of the premises.

SIGN, BILLBOARD — A large freestanding, permanent sign which directs attention to a business, commodity, services or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is located.

SIGN, BUSINESS — A sign identifying the business, company or agency located on the premises. An advertising sign used to direct attention to a product and/or a service or activity not performed on the premises shall not be considered a business sign; such signs are not allowed in Marion.

SIGN, DIRECTIONAL — A sign which directs and gives guidance, but does not contain any advertising.

SIGN, FACE AREA THEREOF — The area within the shortest line that can be drawn around the outside perimeter of a sign, including any frame. Structural members designed for support purposes shall not be included in computing the sign area if they are not used for advertising purposes.

SIGN, FREESTANDING — A sign not supported by a wall nor building and supported by its own permanent base or foundation on or in the ground.

SIGN, PORTABLE OR MOBILE — A sign, not including banners, pennants and the like, which is not supported by its own permanent base nor foundation in the ground.

SIGN, PROJECTING — A sign which is attached to a building, extends more than 12 inches ~~there~~ from therefrom and provides necessary clearance for pedestrians and vehicles.

SIGN, ROOF — A sign which is mounted on the roof of a building above the eave line. The top of the sign may not extend higher than the highest point of the roof on which it is mounted.

SIGN, WALL-MOUNTED — A sign which is attached directly to the wall of a building and does not extend more than 12 inches ~~there~~ from therefrom and provides necessary clearance for pedestrians.

SPECIAL PERMIT GRANTING AUTHORITY — The Board of Appeals, Board of Selectmen, or the Planning Board as designated in this bylaw.

STORY — A portion of a building between the surface of any floor and the surface of the floor or ceiling next above it. A half story is a space under a sloping roof which has the line of intersection of the roof and wall space not more than three feet above floor level, in which space the possible floor area with head room of five feet or less occupies at least 40% of the floor area of the story directly beneath it.

STREET — An improved public way laid out by the Town of Marion, the Plymouth County Commissioners or the Commonwealth of Massachusetts, or a way which the Marion Town Clerk certifies is maintained by public authority as a public way, or a way in existence having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to accommodate the vehicular traffic anticipated by reason of the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and buildings erected or to be erected thereon. A way shall not be a "street" with respect to any lot which does not have appurtenant to it a recorded right of access to and over such way for vehicular traffic.

STRUCTURE — A combination of materials to form a construction, including, among others, buildings, stadiums, tents, reviewing stands, platforms, stagings, observation towers, water tanks, play ~~tower~~ towers, swimming pools, trestles, sheds, shelters, fences over six feet high, display signs, flagpoles, masts for radio ~~antenna~~ antennas, courts for tennis or similar games, backstops, backboards; ~~the term "structure" shall be construed as if followed by the words "or portion thereof."~~ A vessel shall not be considered to be a structure.

STRUCTURE, ACCESSORY — A use or structure which is subordinate to, customarily incidental to and located on the same lot as the principal building or use to which it is accessory.

STRUCTURE, NONCONFORMING — A structure lawfully existing at the time of this bylaw, or any subsequent amendment thereto, which does not conform to one or more provisions of this bylaw.

TRACT — An area of land comprising one or more lots for the purposes of an application under this bylaw.

USE, ACCESSORY — A use incidental and subordinate to the principal use of the structure or lot; or a use not the principal use, which is located on the same lot or in the same structure as the principal use.

USE, CHANGE OF — Any change in type or class of activity for a nonresidential lot or building requires ~~a Plan and Site Review~~ site plan review. Examples of types of activity include, but are not limited to, the following: retail sales, medical use, food service, office use, manufacturing, distribution, etc. Any changes

within a type or class of use may require ~~asite plan and site Review~~review. There shall be a review if change results in a significant change in impact on the neighborhood as in the following: pedestrian or vehicular traffic flow within or to the site, parking requirements, noise, odors, hours of operation, outdoor lighting, use of outside space for display of goods. All nonresidential nonconforming uses will require ~~Plan and Site Review~~site plan review.

USE, EDUCATIONAL (EXEMPT) — Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation defined in MGL c. 180.

VARIANCE — Such departure from the terms of this bylaw which the Zoning Board of Appeals, upon appeal in specific cases, is empowered to authorize under the terms of Article II, § 230-2.3D, of these bylaws.

VEGETATIVE COVER — Shrubs, grass, trees and other forms of growing ground cover, whether landscaped or naturally occurring.

WAREHOUSE — A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises, but excluding mini or self-storage facilities.

WETLANDS — Area characterized by conditions described in MGL c. 131, § 40.

YARD — An open space on a lot not covered by a building or structure.

YARD, FRONT — A yard extending between lot ~~sideline~~side lines across the lot adjacent to each street it abuts.

YARD, REAR — A yard extending between the ~~sideline~~side lines of a lot adjacent to the rear line of the lot.

YARD, SIDE — A yard extending along each ~~sideline~~side line of a lot between front and rear yards.

ARTICLE XII

Open Space Development District [Added 6-18-1990 STM by Art. 1]

§ 230-12.1. Purpose; bulk requirements; allowable structures.

- A. The Open Space Development District is intended to apply to tracts of land of 50 acres or more located in the Residence C District and owned by one or more property owners where flexible development controls will allow residential uses and accessory uses incident thereto, which will preserve common open spaces, natural resources, or agricultural lands to the extent of at least 40% of the tract in accordance with the overall goals of the Marion Land Use Plan and the Marion Open Space Plan. Residential uses other than single-family homes on individual lots will be allowed within an Open Space Development District subject to assurances that such development will enhance the amenities in the neighborhood in which it occurs.
- B. There shall be no minimum lot area, frontage or yard requirements within an Open Space Development District. However, no building shall be erected within 40 feet of an existing public way or boundary line or an Open Space Development District.
- C. The Open Space Development District is intended to offer incentives to property owners through the offering of options to develop under standards which are unique to the site and not limited by the standards which generally apply to development within the Residence C District.

- D. The Open Space Development District allows for the construction of single-family (detached and attached) and multiunit structures of all types. The flexibility permitted with respect to types of ownership and housing types in an Open Space Development District should allow for a range of housing costs. The total number of residential units allowable on the site proposal for an open space development shall not exceed the number that would be allowed in the Residence C District. The Open Space Development District, however, also provides for an increase in density up to a maximum of 15% if a certain number of affordable housing units are provided in the district.

§ 230-12.2. Permitted uses; approval process.

- A. Unless and until any portion of the Residence C District is placed in an Open Space Development District, the permitted uses shall be those in effect from time to time in the Residence C District.
- B. Upon the submission of a preliminary open space development plan pursuant to § 230-12.3 and compliance with other requirements of this Article XII, any portion of the Residence C District of 50 acres or more may be placed, by a two-thirds vote of the Marion Town Meeting, in an Open Space Development District. Open Space Development Districts shall be numbered sequentially at the time of the Town Meeting vote.
- C. The Open Space Development District shall be considered an overlay district. If site plan approval is obtained for land within an Open Space Development District, the provisions of the overlay district shall apply thereafter.
- D. All of the definitions set forth in Article XI, and the provisions of any other overlay district in which such land may be located, shall apply within any Open Space Development District, and the requirements of other provisions of the Zoning Bylaw not limited in application to particular underlying zoning districts shall apply except to the extent expressly and conspicuously otherwise stated in the written portion of the preliminary open space development plan.

§ 230-12.3. Preliminary open space development plan application; fee.

- A. Rezoning land to the Open Space Development District shall be initiated by the preparation of a preliminary open space development plan application submitted, along with a filing fee, to the Board of Selectmen and signed by all of the owners of the affected land or their authorized representatives.
- B. Prior to filing the preliminary open space development plan application, the applicant shall attend a pre-submission conference with the Planning Board to review the information and specifications the applicant must submit and the amount of the filing fee. With respect to the fee, the Planning Board may be guided in part by the provisions of § 230-9.15, Application fee. The fee shall be sufficient to recompense the Town and the Planning Board for any or all of the out-of-pocket costs of reviewing and analyzing the application.
- C. Within five days of receipt of such application and petition for a revision in the Zoning Bylaw, the Board of Selectmen shall forward copies of the preliminary open space development plan application to the Planning Board for review and the conduct of the public hearing. Additional copies of the preliminary open space development plan application also shall be forwarded within five days to the Conservation Commission, Board of Health, Public Works Administration, Police and Fire Departments, and such other boards and commissions as the Board of Selectmen may designate, for review and comment to the Planning Board.
- D. The preliminary open space development plan application shall include the information which the Planning Board requires for the submission of a site plan under Article IX of this bylaw, and, as appropriate, information covered by § 230-10.13, Ownership of ~~Open Space, of Section 10, Cluster~~

~~Residential Housing-~~contiguous open space. The Planning Board, in the interest of encouraging this type of development, may, following a pre-submission conference, relax some of the submission requirements to the extent that they will not adversely influence the ability of the Town Meeting to make a reasoned decision in voting on the creation of an Open Space Development District. Since the Planning Board will review a final open space development plan under Article IX requirements as well as additional standards and criteria as listed in § 230-12.7, extensive detail may not be necessary or appropriate for a project which must be presented at Town Meeting.

- E. The preliminary open space development plan application shall provide information to allow a determination of the number of lots that could be developed on the land by utilizing a conventional subdivision plan in accordance with the Rules and Regulations Governing the Subdivision of Land in Marion. Wetlands, as defined under the Wetlands Protection Act, water bodies, and any land otherwise prohibited from development by local bylaw or regulation shall not be included in the overall area in calculating density. The burden of proof shall be on the applicant in determining the allowable number of dwelling units.
- F. The preliminary open space development plan application may provide that the number of dwelling units obtained through the computations described in the preceding ~~paragraph~~subsection may be increased by 15% if between 15% and 30% of the dwelling units within the open space development plan are affordable (as defined in Article XI), "independence housing," or "starter housing~~÷~~."
 - (1) "Independence housing" is defined as small~~-~~floor~~-~~area single~~-~~family detached or attached owner-occupied housing designed to serve families and individuals where the head of household is 55 years of age or older. Deed restrictions shall apply to maintain affordability and limit resale to those 55 and older as allowed by law.
 - (2) "Starter housing" is defined as single~~-~~family detached or attached, owner~~-~~occupied housing. "Starter housing" shall be available for purchase to first~~-~~time homebuyer households earning at least 80% but less than 110% of the median income for the Metropolitan Area as determined by the most recent calculation of the U.S. Department of Housing and Urban Development. Long~~-~~term availability at affordable costs will be provided in the form of deed restrictions and other conditions as allowed by law.
- G. The preliminary open space development plan application shall include a statement identifying all respects in which the proposed development will not comply with any provision of the bylaw, not limited in application to the Residence C District.
- H. The applicant shall recognize that the preliminary open space development plan as submitted with the application will be in the form of a plan which will be the basis for binding action by the Town Meeting. The applicant may provide specifications beyond those required by the Planning Board. Such additional specifications shall be binding to the same extent as those required by the Planning Board.

§ 230-12.4. Public hearing.

- A. Pursuant to the provisions of MGL c. 40A, § 5, the Planning Board shall give notice and hold a public hearing within 65 days after the submission of the preliminary open space development plan application to the Planning Board by the Board of Selectmen.
- B. In addition to the notices required by law, a description of the preliminary open space development plan and notice ~~of~~ of such hearing, including reproductions of architectural renderings and of the site plan, all in a form approved by the Planning Board, shall be mailed to each registered voter of the Town at least 14 days prior to such hearing. The applicant shall pay the cost of reproduction and

mailing of such notice. Failure of notice by mail shall not be a bar to action on the plan unless actual prejudice is shown.

§ 230-12.5. Change in application.

The Planning Board may recommend changes in the preliminary open space development plan at the Town Meeting if it finds that there is good cause for the change and that the change is not inconsistent with the information presented at the Planning Board hearing.

§ 230-12.6. Town Meeting.

- A. The preliminary open space development plan application shall be presented to the Town Meeting which considers the creation of an Open Space Development District for the area covered by the application, and shall be identified in any motion to create such a district. In the event that the procedures followed with respect to a preliminary open space development plan application do not conform in all of the requirements of this Article XII, such nonconformity may be waived upon the favorable recommendation of the Planning Board, by a two-thirds vote of the Town Meeting.
- B. The preliminary open space development plan application, as submitted to the Town Meeting, may be amended on the floor of the Town Meeting to add restrictions, limitations or requirements.

§ 230-12.7. Site plan approval.

- A. Final open space development plan. After the approval by the Town Meeting for the designation of an Open Space Development District and approval of a preliminary open space development plan application, the Planning Board may grant site plan approval for a final open space development plan for the development of the land within the Open Space Development District. At its option, the Planning Board may coordinate its site plan approval of a final open space development plan with any required subdivision review for land located within an Open Space Development District.
- B. The procedures outlined in Article IX, Site Plan Review and Approval, shall be followed in the issuance of site plan approval. In addition to the findings that the Planning Board may require under site plan review and approval, the Planning Board shall approve a final open space development plan if it finds the plan:
 - (1) Is substantially consistent in all respects with the approved preliminary open space development plan.
 - (2) Provides for no greater number of dwelling units than is provided in the approved preliminary open space development plan.
 - (3) Provides for no uses which are not permitted by the approved preliminary open space development plan.
 - (4) Provides a suitable development which is in harmony with the objectives of the Zoning Bylaw and Land Use Plan and will not be detrimental to the surrounding neighborhoods.
 - (5) Provides that land shown in the approved preliminary open space development plan as permanent open land shall be conveyed in the manner provided for ownership of open land under ~~{Section 10.15 of the Cluster Residential Housing regulations.}~~ § 230-10.13, Ownership of contiguous open space.
 - (6) Satisfies the following additional design standards and criteria:

- (a) The existing land form shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal and man-made features such as stone walls.
- (b) The natural character and appearance of the Town shall be maintained and enhanced by screening views of the development from nearby streets and adjoining neighborhoods. Existing land forms and vegetation should be used where possible.
- (c) Open space shall be located and designed so as to increase the visual amenities of the neighborhood as well as for the occupants of the open space development area. Where appropriate, links to open spaces, as proposed in the Land Use Plan and Open Space Plan, shall be provided.
- (d) Buildings shall be located so as to be harmonious with the land form.
- (e) Access points from driveways or new streets to the Town's existing street system shall be minimized.
- (f) Utility systems should be located underground or as inconspicuously as possible.

§ 230-12.8. Amendment of site plan.

Amendments to approved final open space development plans shall be processed in accordance with the provisions of Article IX, Site Plan Review and Approval, and shall be subject to the findings required under § 230-12.7.

ARTICLE XIII

(Reserved)⁴

~~**Rate of Development—
[Added 3-10-1997 STM by Art. S1]**~~

~~**§ 230-13.1. Purpose.**~~

~~The purpose of this section, "Rate of Development", is to promote orderly growth in the Town of Marion, consistent with the rate of residential growth over the last eleven calendar years, to phase growth so that it will not unduly strain the community's ability to provide basic public facilities and services, to provide the Town, its Boards and its agencies information, time, and capacity to incorporate such growth into the Master Plan for the community, and to preserve and enhance existing community character and the value of property.—~~

~~**§ 230-13.2. General.** [Amended 4-23-2001 ATM by Art. 18]~~

~~Beginning on March 10, 1997 building permits for not more than 26 dwelling units shall be issued in each of the 10 full calendar years following said date, for the construction of new residential dwellings. For the purposes of this section, an accessory apartment shall constitute a dwelling unit. The provisions of this section shall not apply to any lot or lots existing prior to March 10, 1997, which, at the time of recording, complied with the Zoning Bylaws.—~~

~~**§ 230-13.3. Procedures.**~~

4. Editor's Note: Original Sec. 13, Rate of Development, added 3-10-1997 STM by Art. S1, as amended, expired 1-1-2007 and has therefore been removed from the Zoning Bylaw.

~~Any building permits issued shall be issued in accordance with the following procedures:—~~

- ~~A. The Building Commissioner shall act on each permit in order of submittal. Any permit application that is incomplete or inaccurate shall be returned to the applicant within three business days and shall require new submittal.—~~
- ~~B. Permits shall be issued on alternate Fridays, one per Friday. Permits not issued in any month of the calendar year in accordance with this schedule shall be available in any subsequent month for issuance by the Building Commissioner.—~~
- ~~C. The Building Commissioner shall mark each application with the time and date of submittal.—~~
- ~~D. Any building permits not issued in any calendar year shall not be available for issuance in any subsequent year.—~~
- ~~E. At the end of each calendar year in which this Bylaw is in effect, the Building Commissioner shall retain all applications for which a building permit has not been issued. Upon being informed in writing by the applicant before the tenth of January of the succeeding calendar year that the applicant desires the application to remain in effect, the Building Commissioner shall treat said application in accordance with Subsection A above.—~~

~~§ 230-13.4. Special permit exemption.—~~

~~Upon a determination by the Planning Board under a Special permit application that the building permits will be issued for dwelling units within a development that will provide special benefits to the community, said permits shall be exempt from this section in its entirety, and shall not count toward the 26 permits to be issued annually. The Planning Board may grant a Special Permit under this section only if the Board determines that the probable benefits to the community outweigh the probable adverse effects resulting from granting such permit, considering the impact on schools, other public facilities, traffic and pedestrian travel, recreational facilities, open spaces and agricultural resources, traffic hazards, preservation of unique natural features, planned rate of development, and housing for senior citizens and people of low or moderate income, as well as conformance with Master Plan or Growth Management Plans prepared by the Planning Board pursuant to M.G.L. c.41, s. 81D. The Planning Board shall give particular consideration to proposals that demonstrate a reduction in allowable density of 50% or more.—~~

~~§ 230-13.5. Exemptions.—~~

~~The provisions of this section shall not apply to, nor limit in any way, the granting of building or occupancy permits required for enlargement, restoration, or reconstruction of dwellings existing on lots as of the date of passage of this Bylaw, but shall apply to the conversion of single family to two family dwellings.—~~

~~§ 230-13.6. Time limitation and extension. [Amended 4-23-2001 ATM by Art. 18]—~~

~~This section shall expire on January 1, 2007; provided, however, that this section may be extended without lapse of its provisions and limitations, by vote of the Town Meeting prior to January 1, 2007.—~~

ARTICLE XIV
Subdivision Phasing
[Added 3-10-1997 STM by Art. S2]

§ 230-14.1. Purpose.

The purpose of this ~~section, "article,~~ Subdivision Phasing",² is to assure that growth shall be phased so as not to unduly strain the Town's ability to provide public facilities and services, so that it will not disturb the

social fabric of the community, so that it will be in keeping with the community's desired rate of growth^{1.1} and so that the Town can study the impact of growth and plan accordingly.

§ 230-14.2. Applicability.

The issuance of building permits for any tract of land divided pursuant to any provision of MGL c. 41, §§ 81K through 81GG, the Subdivision Control ~~Act~~Law, into more than seven lots after the effective date of this bylaw shall be subject to the regulations and conditions set forth herein. This provision shall apply to any proposed division or combination of properties which were in the same ownership and contiguous as of March 10, 1997.

§ 230-14.3. Phased issuance of building permits.

Not more than seven building permits shall be issued in any twelve-month period for construction of residential dwellings on any tract of land divided into more than seven lots pursuant to any provision of MGL c. 41, §§ 81K through 81GG, the Subdivision Control ~~Act~~Law.

§ 230-14.4. Exceptions.

Issuance of more than seven building permits for the same tract of land in a twelve-month period may be allowed in the following circumstances:

- A. The owner of said land may apply for a special permit from the Planning Board for the issuance of more than seven building permits in any twelve-month period. The Planning Board may grant a special permit only if the Board determines that the probable benefits to the community outweigh the probable adverse effects resulting from granting such permit, considering the impact on schools, other public facilities, traffic and pedestrian travel, recreational facilities, open spaces and agricultural resources, traffic hazards, preservation of unique natural features, planned rate of development, and housing for senior citizens and people of low or moderate income, as well as conformance with Master Plan or Growth Management Plans prepared by the Planning Board pursuant to MGL c. 41, § 81D. The Planning Board shall give particular consideration to proposals that demonstrate a reduction in allowable density of 50% or more. ~~Where such Special Permit is granted, any building permits issued for dwelling units within the division of land shall not count toward the 26 permits to be issued annually in § 230-13.2.~~
- B. Where the tract of land will be divided into more than 40 lots, the Planning Board may, by special permit, authorize development at a rate not to exceed 10% of the units per year.

§ 230-14.5. Zoning change protection.

The protection against subsequent zoning change granted by MGL c. 40A, § 6 to land in a subdivision shall, in the case of a development whose completion has been constrained by this ~~section~~article, be extended to 10 years.

§ 230-14.6. Relation to real estate assessment.

Any landowner denied a building permit because of these provisions may appeal to the Board of Assessors, in conformity with MGL c. 59, § 59, for a determination as to the extent to which the temporary restriction on development use of such land shall affect the assessed valuation placed on such land for purposes of real estate taxation, and for abatement as determined to be appropriate.

ARTICLE XV

Flexible Development
[Added 10-28-1997 STM by Art. S4]

§ 230-15.1. Purpose.

The purpose of this Article XV, Flexible Development, is to preserve open space, forested and other scenic views along the public ways in the Town of Marion; to protect the natural environment; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to preserve Marion's traditional New England landscape and to allow landowners a reasonable return on their investment.

§ 230-15.2. Applicability. [Amended 5-21-2007 ATM by Art. 25]

Any creation of five or more parcels in a residence district, whether a subdivision or not, from a parcel or set of contiguous parcels held in common ownership may proceed under this Article XV, Flexible Development, and is further subject to the requirements of Article IX, Site Plan Review and Approval.

§ 230-15.3. Application procedure.

Applicants for flexible development shall file with the Planning Board six copies of a development plan conforming to the requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board. The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

§ 230-15.4. Modification of lots.

The Planning Board may authorize modification of lot size, shape and other bulk requirements for lots within a flexible development, subject to the following limitations:

- A. Lots having reduced area or frontage shall not have frontage on a street other than a street created by subdivision involved.
- B. Lots may be reduced in area to a minimum of 85% of the otherwise applicable requirement for the district.
- C. Lot frontage may be reduced to 65% of the frontage required in the district, provided that all lots located within the flexible development shall average 85% of the frontage required in the district.
- D. Each lot shall have at least 85% of the required yards for the district.

§ 230-15.5. Visual buffer requirements.

A buffer area, not less than 200 feet in width, shall be provided between any public way adjacent to the flexible development and any home constructed therein. The buffer may be constituted as a "no build" zone with the site, and may serve as area for individual lots contained therein. No indigenous vegetation shall be removed from this buffer zone before or after the development of the residential compound (except for removal necessary for the construction of subdivision roadways and services and ordinary maintenance), nor shall any building or structure be placed therein.

§ 230-15.6. Compliance with other requirements.

The submittals and permits of this ~~section~~article shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Bylaw.

ARTICLE XVI
Solar Photovoltaic and Thermal Systems
[Added 10-28-2013 STM by Art. S10]

§ 230-16.1. Purpose.

The purpose of the Solar Bylaw is to provide standards and guidelines for the installation of solar photovoltaic (PV) and solar thermal systems in the Town of Marion, while protecting public health, safety, and welfare and preserving the character of the Town.

§ 230-16.2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ACCESSORY USE — ~~An accessory use is a~~ feature that is sized and designed to support the primary function of the buildings located on the property.

APPLICANT — ~~For the purposes of this Bylaw, "Applicant" may include~~ Includes:

- A. Fee owners of real property who also own the system; or
- B. Fee owners of real property who intend on leasing the system to a third party pursuant to a legally binding instrument; or
- C. Third parties who are not the fee owners of the real property but who have obtained written permission from the fee owners of the real property to submit an application for a system pursuant to the terms and conditions of this bylaw.

PHOTOVOLTAIC — The technology that uses a semi-conductor material to convert light directly into electricity.

SIZE OF SOLAR PANEL — All size limitations cited herein shall apply to the full-face areas of an array of solar panels themselves, not their projected areas on roofs or ground.

SOLAR FARM — ~~Solar Farms are~~ Systems designed for the primary purpose of generating power for ~~the~~ sale to third parties via the electric grid. These systems can be roof-mounted systems or ground-mounted systems that may or may not have accessory structures on the same lot.

SOLAR PANEL — ~~A panel is any~~ Any part of a system that absorbs solar energy for use in the system's energy transformation process.

SOLAR SYSTEMS — [Hereinafter "system(s)."] Installed in Marion, whether roof- or ground-mounted, shall include any engineered and constructed structure that converts sunlight into:

- A. Electrical energy (PV systems) through an array of solar panels that ~~connect~~ connects to a building's electrical system or to the electrical grid; or
- B. Heat energy (thermal systems) through an array of solar panels that heats water to be used on site.

§ 230-16.3. General standards for solar systems.

The following represents the general standards that shall apply to systems installed pursuant to the provisions of this bylaw:

- A. Systems and solar panels shall be placed and arranged such that reflected solar radiation or glare shall not be directed onto adjacent buildings, properties or roadways.

- B. A system shall not be used to display advertising, including signage, streamers, pennants, spinners, reflectors, ribbons, tinsel, balloons, flags, banners, or similar materials, with the exception of the following: Necessary equipment information, warnings, or indication of ownership shall be allowed on any equipment of the system or where required by the Building Code.
- C. No system or any of its components shall be illuminated, except to the degree minimally necessary for public safety and/or maintenance and only in compliance with the Marion Zoning Bylaw.
- D. All systems shall be considered either a "structure" or an "accessory structure" as defined in the Marion Zoning Bylaw and shall have setbacks on all sides in accordance with existing zoning requirements as stated in the Dimensional Requirements Table found within § 230-5.1 of the Marion Zoning Bylaw or as further defined in this bylaw.
- E. A system installation shall limit the visual and other impacts on the adjacent properties. The systems shall be screened from ground and water level view of the line of sight from public ways or waterway and adjacent properties by appropriate year-round landscaping, fencing, screening, or other type of buffers consistent and compatible with the character of the neighborhood where the system is located.
- F. Large-scale clearing of forested areas for the purpose of constructing systems is prohibited.
- G. No system shall be used or constructed such that it becomes a private or public nuisance or hazard, and no system shall be abandoned or not maintained in good order and repair. Any system that is deemed a private or public nuisance or hazard or otherwise abandoned or not maintained in good order and repair shall be removed from the property at the property owner's sole expense.
- H. Stormwater and snowmelt runoff and erosion control shall be managed in a manner consistent with all applicable federal, state and local regulations and shall not impact neighboring properties.
- I. Wall mounting or any other form of face-mounted system on any building or structure is prohibited in all zoning districts.
- J. Utility connections. All electrical work shall be in accordance with the National Electrical Code and the Massachusetts Building Code and have received all applicable permits, including but not limited to environmental permits as may be required. All power transmission lines from a ground-mounted system to any building or other structure shall be located underground unless otherwise required by the State Building Code or impeded by special ground site conditions.
- K. Any deviation from the requirements set forth in design standards for all districts shall be subject to a streamlined special permit process as defined in § 230-16.9.

§ 230-16.4. Roof-mounted systems.

- A. Roof-mounted systems may be installed in all zoning districts by an applicant, requiring only that a building permit has been issued by the Marion Building Commissioner and that the system conforms to the Marion Zoning Bylaw and to Subsections B, C and D below.
- B. Within , roof-mounted Systems shall conform to existing roof contours, extending not more than 12 inches above roof surfaces. Roof-mounted Systems shall be set back a minimum of eight inches from all roof edges (eaves, gutter line, ridge) of the roof surface and 24 inches from adjacent roof or abutting roof or walls of adjoining property. All residential flat roof systems shall conform to requirements of [§ 230-16.3E+6.3.6](#).
- C. Flat roof mounted systems shall have a four-foot ~~set-back~~setback from the edge of the building perimeter. Screening is not a requirement.

- D. In nonresidential districts, roof-mounted solar panels as part of the system may be installed at angles of up to 50° from the horizontal on flat roofs (defined as having a roof pitch less than two inches per foot). The ~~top-most~~^{topmost} points of the solar panels shall not exceed a total height of four feet above the roof surface. On a pitched roof system (roof pitch equal or greater than two inches per foot), the ~~top-most~~^{topmost} point of the solar panel shall not exceed two feet measured perpendicular to the roof surface. Systems shall be set back from building edge a minimum of four feet. All these systems are considered to be building-mounted mechanical systems and shall meet all requirements thereof. All flat roof systems shall conform to requirements of Subsection C above.

§ 230-16.5. Ground-mounted systems in nonresidential districts.

This section of the bylaw applies to ground-mounted systems not classified as solar farms.

- A. Ground-mounted systems equal to or less than 900 square feet or 1.5% of lot size, whichever is larger, may be installed by an applicant via issuance of a building permit by the Marion Building Commissioner.
- B. A solar panel array greater than 900 square feet or 1.5% of lot size, whichever is larger, with a maximum system size of 1,500 square feet, shall be reviewed and approved by the Planning Board pursuant to the provisions of § 230-16.9-~~f~~₁. Streamlined special permits, and is subject to a minor site plan review (§ 230-16.7).
- C. A solar panel array greater than 1,500 square feet shall be reviewed and approved by the Planning Board pursuant to the provisions of § 230-16.9-~~f~~₁. Streamlined special permits, and is subject to major site plan review (§ 230-16.8).
- D. The maximum height above ground level of any portion of the system shall be six feet, measured as the vertical distance from the mean natural grade on the street side(s) and, if not abutting a street, from the mean natural ground level along the system's designated front yard, as said front yard is designated by the Building Commissioner.

~~E. The system shall be screened from view from adjacent residential properties.~~

§ 230-16.6. Ground-mounted systems in residential districts.

This section of the bylaw applies to ground-mounted systems for ~~onsite~~^{on-site} electrical use.

- A. A solar panel array limited in size to 600 square feet or 1.5% of lot size, whichever is larger, may be installed after obtaining a building permit from the Building Commissioner.
- B. System(s) greater than 600 square feet or 1.5% of lot size, whichever is larger, shall have been reviewed and approved by the Planning Board pursuant to the provisions of § 230-16.9-~~f~~₁. Streamlined special permits, and to a minor site plan review (§ 230-16.7).
- C. The maximum height above surrounding ground level of any portion of the system shall be six feet, measured as the vertical distance from the mean natural grade on the street side(s) and, if not abutting a street, from the mean natural ground level along the system's designated front yard, as said front yard is designated by the Building Commissioner.
- D. At the expense of the applicant, all parties in interest shall be notified of the Planning Board meeting during which a minor site plan review application is to be held pursuant to the provisions of MGL c. 40A, § 11, notwithstanding that a public hearing shall not be required.

§ 230-16.7. Minor site plan review and approval.

Where required by this bylaw (Article XVI et seq.), submission to the Planning Board for minor site plan review and approval pursuant to § 230-9.1B of the Zoning Bylaw shall be as set forth herein and regardless of the minimum threshold requirements found in § 230-9.1B. In addition to the submission requirements found in § 230-9.1B of the Zoning Bylaw, the Planning Board may require, where in its sole judgment it deems relevant, the submission of one- or three-line electrical diagrams detailing solar PV systems, associated components, electrical interconnection methods, all National Electrical Code compliant disconnects and overcurrent devices, documentation of major system components to be used, including PV panels, mounting system, and inverter(s).

§ 230-16.8. Major site plan review and approval.

Where required by this bylaw (Article XVI et seq.), submission to the Planning Board for major site plan review and approval pursuant to § 230-9.1C of the Zoning Bylaw shall be as set forth herein and regardless of the minimum threshold requirements found in § 230-9.1C. In addition to the submission requirements found in § 230-9.1C of the Zoning Bylaw, the Planning Board may require, where in its sole judgment it deems relevant, the submission of one or three-line electrical diagrams detailing solar PV systems, associated components, electrical interconnection methods, all National Electrical Code compliant disconnects and overcurrent devices, documentation of major system components to be used, including PV panels, mounting system, and inverter(s), the designed annual electrical output of the system and evidence of the annual on-site consumption in watt-hours. In addition, the Planning Board may require the applicant to provide the name, address, and contact information of proposed system installer, the name, contact information and signature of any agents representing the project proponent, require the provision of evidence of site control, evidence of utility notification, an operation and maintenance plan, emergency response plan, and a description of financial surety.

§ 230-16.9. Streamlined special permits.

Certain systems regulated by this bylaw may be subjected to a streamlined special permit procedure that obviates the need to comply with the four enumerated filing requirements contained in Article VII of the Zoning Bylaw (special permit requirements) and MGL c. 40A, § 9 of the Zoning Act as noted below. Specifically, where this bylaw designates an application to be subject to a streamlined special permit, a special permit from the Planning Board pursuant to Article VII of the Zoning Bylaw shall be required; however, the requirements of (1) a traffic study; (2) an environmental impact study, (3) a stormwater study, and (4) a peer review by the Town's engineer shall not be required.

§ 230-16.10. Modifications to existing systems.

Additions and alterations to any system lawfully in existence as of the effective date of this bylaw shall conform to the requirements of this bylaw. All the provisions of this bylaw, including review pursuant to streamlined special permit § 230-16.9, shall apply to any modification, expansion or alteration to or of, a system installed or constructed pursuant to this bylaw or any system preexisting the effective date of this bylaw.

§ 230-16.11. Solar farms.

Ground-mounted solar farms are allowed in residential districts under the following conditions:

- A. In addition to requirements provided elsewhere in this bylaw, system(s) within a solar farm shall be subject to review and approval by the Planning Board pursuant to the provisions of § 230-16.8, (Major site plan review and approval;

- B. System(s) within a solar farm shall require receipt of a special permit as defined in Article VII of the Marion Zoning Bylaws.
- C. Solar farms shall be located on lots with a minimum of three contiguous acres (no less than 130,680 square feet).
- D. Systems within solar farms shall comply with setbacks according to the Marion Zoning Bylaw except where an adjacent property has or could have a dwelling unit(s) within 100 feet of the system, in which case the setback must be a minimum of 100 feet along adjacent property lines. Access paths around the perimeter of the system may be located in the setback area.
- E. The maximum height of the ground-mounted solar arrays, support structures and any local berm below the structures shall be limited to eight feet above the mean natural grade on the street side(s) and, if not abutting a street, from the mean natural ground level along the system's designated front yard, as said front yard is designated by the Planning Board.
- F. The Planning Board shall be the special permit granting authority. All modifications to a solar farm made after issuance of the special permit shall require approval by the Planning Board in accordance with the existing process for modifications to special permits.
- G. The following additional conditions apply and shall be included with an application for a special permit and major site plan review for a solar farm:
 - (1) The name and affiliation of the electrical engineers or electricians who will design the connection to the grid or load.
 - (2) Property lines for the subject property and all properties adjacent to the subject property within 300 feet.
 - (3) A plan view to scale with elevations and sight line representations that shall include:
 - (a) The system, all existing buildings, including description of existing use, if known (e.g., residence, garage, accessory structure and so forth), located on the property and on all adjacent properties located within 300 feet of the proposed solar farm.
 - (b) Distances, at grade, from the proposed solar farm to each structure shown on the vicinity plan as well as a plan for screening.
 - (4) All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
 - (5) A map or plan, as required, showing the connection to the grid or load, as applicable.
 - (6) Colored photographs or Google Earth or equivalent view of the current conditions and view of the site from at least four locations from the north, south, east, and westerly directions shall be submitted.
 - (7) Material safety data sheets identifying the presence of any hazardous or potentially hazardous materials.

§ 230-16.12. Abandonment or discontinuation of use of solar farms.

- A. At such time as the holder of a special permit issued or subsequent owner(s) elects to abandon or discontinue the use of the solar farm, the holder shall notify the Planning Board by certified mail, return receipt requested, of the proposed date of abandonment or discontinuance. In the event that a holder fails to give such notice, the solar farm facility shall be considered abandoned or discontinued

if the solar farm has not been operational for 180 days unless the Planning Board has authorized an extension pursuant to MGL c. 40A, § 9.

- B. Upon abandonment or discontinuation of use, the owner shall physically remove the solar farm facility within 120 days from the date of abandonment or discontinuation of use. For good cause shown, this period may be extended at the request of the holder of the special permit at the discretion of the Planning Board. "Physically remove" shall include, but not be limited to:
- (1) Removal of the solar collection panels frames, supporting structures, foundations, electrical equipment, and connections, all other equipment, equipment shelters and vaults, security barriers and all appurtenant structures from the solar farm site;
 - (2) Proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations;
 - (3) Restoration of the location of the solar farm facility site to its natural condition, except that any landscaping consistent with the character of the site and neighborhood may remain.

§ 230-16.13. Financial surety; removal, decommissioning and abandonment of solar farms.

- A. Prior to the issuance of a special permit or building permit for any solar farm ground-mounted ~~System~~ issystem as otherwise permitted pursuant to this bylaw, an escrow agreement (the "escrow agreement") in form and substance acceptable to the property owner and the Planning Board shall be executed by the applicant for said special permit or building permit, the property owner, and an escrow agent (such party to be acceptable to the property owner, the applicant, and the Planning Board), with the Town of Marion named as a third-party beneficiary under such escrow agreement. The escrow agreement shall require, among other things, that the applicant shall deposit a specified sum of money in an escrow account (the "escrow account") to be held by the escrow agent. The escrow agent shall be a financial institution that regularly acts as an "escrow agent" or "trustee."
- B. The escrow amount shall be sufficient to cover the estimated cost to the property owner to remove the facility in full and remediate the landscape. Where the applicant is not the property owner, the escrow agreement shall contain a provision, to the satisfaction of the Planning Board, that any funds released from the escrow account following the expiration or earlier termination of the lease between the property owner and the applicant shall:
- (1) First be used by the property owner solely to complete said removal and remediation up to the amount set forth in the lease;
 - (2) Second, to be used by the property owner to complete any additional removal and remediation as prescribed by the Planning Board (and consented to by the property owner) up to the amount set forth in the escrow agreement; and
 - (3) Any excess be returned to the applicant.
- C. The escrow amount shall be established by the applicant to the satisfaction of the Planning Board and the property owner based upon the applicant's delivery of a fully inclusive estimate of the costs (the "removal cost estimate") associated with said removal and remediation (such amount not to be less than the amount set forth in the lease), prepared by a qualified engineer. The shall be reevaluated every seventh anniversary of the Building Permit by the applicant's designated engineer and, in the event of any adjustments to said removal cost estimate that are approved in writing by both the Planning Board and the property owner, the escrow amount shall be correspondingly adjusted to reflect such updated removal cost estimate. Within 90 days of each said seventh anniversary, the

property owner shall confirm in writing to the Planning Board the continued compliance and fully funded status of the escrow account in satisfaction of this condition.

- D. Any system that does not comply with the above—~~noted~~ requirements, including the ~~re-evaluation~~reevaluation requirements governing the removal cost estimate, and any system that has been abandoned or not used for a period of two years or more shall be deemed to no longer comply with the Marion Zoning Bylaws and shall be subject to the enforcement and penalty provisions of civil and criminal laws of the Town of Marion and Commonwealth of Massachusetts.

§ 230-16.14. Utility notification regarding solar farms.

Prior to the issuance of a building permit for the construction of a solar farm, the solar farm applicant shall provide the Building Commissioner with documentation that the utility company that operates the electrical grid where the solar farm is to be located has executed a ~~non-contingent~~noncontingent, binding and enforceable utility interconnection agreement with the solar farm owner and applicant for the electrical generation of the solar system.

§ 230-16.15. Recording of special permit; change in ownership of solar farms.

Once a special permit for a solar farm has been approved, the applicant shall duly record a copy of the special permit with the Plymouth County Registry of Deeds. All subsequent deeds to the property shall refer to the special permit and incorporate it by reference. All conditions under which the special permit was originally granted shall be binding on all successive owners and operators of the property.

§ 230-16.16. Severability.

The provisions of this bylaw are severable. If any provision of this bylaw is held invalid, the other provisions shall not be affected thereby. If the application of this bylaw or any of its provisions to any person or circumstance is held invalid, the application of this bylaw and its provisions to other persons and circumstances shall not be affected thereby.

ARTICLE XVII

Medical Marijuana Treatment Centers or Registered Marijuana Dispensaries
[Added 5-12-2014 ATM by Art. 35]

§ 230-17.1. Purpose.

The purposes of this bylaw are:

- A. To exercise lawful oversight and regulation of medical marijuana treatment centers (also known as registered marijuana dispensaries), consistent with Chapter 369 of the Acts of 2012, 105 CMR 725 et seq., and the Town's regulatory powers; and
- B. To limit the siting and operation of medical marijuana treatment centers to locations appropriate to such use, and to regulate such use through conditions necessary to protect community safety while ensuring legitimate patient access.

§ 230-17.2. Applicability.

- A. The commercial cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of marijuana for medical use is prohibited unless permitted as a medical marijuana treatment center under this bylaw.

- B. No medical marijuana treatment center shall be established except in conformity with this bylaw; with all regulations promulgated by the Board of Health; and with the requirements of 105 CMR 725 et seq.
- C. Nothing in this bylaw shall be construed to supersede any state or federal laws or regulations governing the sale and distribution of narcotic drugs.

§ 230-17.3. Definitions.

As used in this article, the following terms shall have the meanings indicated:

MARIJUANA — All parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination. Marijuana also includes marijuana-infused products (MIPs) except where the context clearly indicates otherwise.

MARIJUANA-INFUSED PRODUCT (MIP) — A product infused with marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils, and tinctures. These products, when created or sold by an RMD, shall not ~~mebe~~ considered a food or a drug as defined in MGL c. 94, § 1.

MEDICAL MARIJUANA TREATMENT CENTER — A not-for-profit entity registered under 105 CMR 725.00, to be known as a "registered marijuana dispensary (RMD)," that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers, as those terms are defined under 105 CMR 725.004. Unless otherwise specified, "RMD" refers to the site(s) of dispensing, cultivating, and preparation of marijuana.

MEDICAL USE OF MARIJUANA — The acquisition, cultivation, possession, processing (including development of related products such as tinctures, aerosols, or ointments), transfer, transportation, sale, distribution, dispensing, or administration of marijuana, for the benefit of qualifying patients in the treatment of debilitating medical conditions, or the symptoms thereof, as those terms are defined under 105 CMR 725.004.

REGISTERED MARIJUANA DISPENSARY (RMD) — Has the same meaning as "medical marijuana treatment center."

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) — Pursuant to this bylaw shall be the Planning Board.

§ 230-17.4. Eligible locations.

Medical marijuana treatments centers may be allowed by special permit in the Limited Industrial Zoning District, subject to all requirements of this Zoning Bylaw, the requirements of the Board of Health, and of 105 CMR 725.00 et seq.

§ 230-17.5. General requirements and conditions.

The following requirements and conditions shall apply to all medical marijuana treatments centers:

- A. All medical marijuana treatments centers must obtain a special permit from the permit granting authority, in compliance with all requirements of § 230-7.2 of the Zoning Bylaw, in addition to the particular requirements of § 230-17.6, below.
- B. All medical marijuana treatments centers must obtain site plan approval from the Planning Board in compliance with all requirements of Article IX of the Zoning Bylaw, pursuant to major site plan review under § 230-9.1C of the Bylaw ~~and § 230-17.7, below.~~
- C. No special permit shall be issued without demonstration by the applicant of compliance with all applicable state laws and regulations, and with all local regulations.
- D. No medical marijuana treatment center shall be located within 300 feet of a residential zoning district, or within 500 feet of any lot containing a school, child-care facility, or playground.
- E. No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a medical marijuana treatment center.
- F. No products shall be displayed in the ~~facilities~~facilities' windows or be visible from any street or parking lot.
- G. Signs for all medical marijuana treatment centers must be approved by the special permit granting authority through site plan review pursuant to Article IX of the Zoning Bylaw, and consistent with the provisions of 105 CMR 725.105(L) ("Marketing and Advertising Requirements").

§ 230-17.6. Special permit requirements.

A medical marijuana treatment center shall be allowed only by special permit in accordance with MGL c. 40A, § 9; with all requirements of § 230-7.2 of the Zoning Bylaw; and with the additional requirements contained in this section (§ 230-17.6), below.

- A. Uses. A special permit for a medical marijuana treatment center shall be limited to one or more of the following uses:
 - (1) Cultivating marijuana for medical use;
 - (2) Processing and packaging of marijuana for medical use, including marijuana that is in the form of smoking materials, food products, oils, aerosols, ointments and other products; or
 - (3) Retail sale or distribution of marijuana for medical use to qualifying patients, as that term is defined in 105 CMR 725.004.
- B. Application. In addition to the application requirements set forth in the rules of the special permit granting authority, a special permit application for a medical marijuana treatment center shall include the following:
 - (1) The name and address of each owner of the establishment and property owner;
 - (2) Copies of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the establishment;
 - (3) Evidence of the applicant's right to use the site for the establishment, such as deed, or lease;
 - (4) Proposed security measures for the medical marijuana treatment center demonstrating compliance with all requirements of 105 CMR 725.110, "Security Requirements for Registered Marijuana Dispensaries," including but not limited to secure storage areas, ~~limited-access~~ areas, security measures shall be reviewed and approved by the Police Department. Pursuant

to 105 CMR 725.200(C), the above information is confidential and exempt from the provisions of MGL c. 66; as such, it shall not be part of the public record.

- (5) Proposed operations and maintenance manual for the medical marijuana treatment center demonstrating compliance with all the requirements of 105 CMR 425.110, "Security Requirements for Registered Marijuana Dispensaries," including but not limited to procedures for limiting access to the facility to persons authorized under 105 CMR 725.110(A); and procedures for transport of marijuana and/or MIPs as provided under 105 CMR 725.110(E). Pursuant to 105 CMR 725.2200(C), the above information is confidential and exempt from the provisions of MGL c. 66; as such, it shall not be part of the public record.
- C. Hours of operation. The hours of operation of a medical marijuana treatment center shall be established by the special permit granting authority.
- D. Term of special permit. Special permits shall be valid for a period of two years from the effective date of the special permit.
- E. Transferability of a special permit. Special permits may be transferred only with the approval by the special permit granting authority, in the form of an amendment to the special permit, conditioned upon satisfactory submission of all information required for an original special permit.
- F. Renewals. A special permit may be renewed for successive two--year periods, provided that a written request for renewal is made to the special permit granting authority not less than three months prior to the expiration of the then-existing term. Any request for renewal of a special permit shall be subject to publication notice requirements as required for an original application for a special permit. Such notice shall state that the renewal request will be granted unless, prior to the expiration of the existing special permit, a written objection, stating the reason for such an objection, is received by the special permit granting authority.
 - (1) If any such objection is received, the special permit granting authority shall hold a public hearing on the renewal request and shall proceed in a manner consistent with the special permit renewal request.
 - (2) The special permit shall remain in effect until the conclusion of the public hearing and decision of the special permit granting authority either granting or denying the special permit renewal request.
 - (3) In granting any renewal, the special permit granting authority may alter or impose additional conditions, and/or may provide for revocation of the special permit if any identified violations of this bylaw or any other applicable regulation are not corrected within a specified time period.

§ 230-17.7. (Reserved)~~Site plan approval.~~

~~A Medical Marijuana Treatment Center shall be allowed only upon Site Plan Review and Approval by the Planning Board in accordance with all requirements of Article IX of the Zoning Bylaw. All applications for Medical Marijuana Treatment Centers shall be subject to Major Site Plan Review as provided in Section 9.1.2 of the Zoning Bylaw.~~

§ 230-17.8. Severability.

If any provision of this ~~section~~article or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this ~~section~~article, to the extent it can be given effect, or the

application of those provisions to the persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this ~~section~~article are severable.

ARTICLE XVIII

General

§ 230-18.1. Severability.

The invalidity of any section or ~~provisions~~provision of this bylaw shall not invalidate any other section or provision thereof.

Chapter 300

SUBDIVISION REGULATIONS

[HISTORY: Adopted by the Planning Board of the Town of Marion 3-21-2000, as amended through 5-5-2008. Subsequent amendments noted where applicable.]

ARTICLE I

Purpose and Authority

§ 300-1.1. Purpose.

These subdivision rules and regulations are hereby enacted, in accordance with the provisions of MGL c. 41, § 81M, for the purpose of protecting the safety, convenience, and welfare of the inhabitants of the Town of Marion, by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The powers of the Planning Board and the Board of Appeals under these regulations and the Subdivision Control Law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for securing safety in the case of fire, flood, panic, and other emergencies; for insuring compliance with the Zoning Bylaw, for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, and other municipal equipment, and streetlighting and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the Town, and with the ways in neighboring subdivisions.

§ 300-1.2. Authority; administration of rules and regulations.

These rules and regulations have been adopted under the authority vested in the Planning Board of the Town of Marion by MGL c. 41, § 81Q, as amended. The Planning Board shall be the agency responsible for the administration of the rules and regulations and shall have all of the powers assigned to it by MGL c. 41, §§ 81K to 81GG, inclusive.

§ 300-1.3. Appeals.

Any person, whether or not a party to the proceedings, aggrieved by any decision of the Planning Board concerning a plan of a subdivision or by the failure of the Board to take final action concerning such a plan within the required time, or any municipal officer or board, may appeal in accordance with MGL, c. 41, § 81BB, provided that such decision has been recorded in the office of the Town Clerk or within 20 days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to the Town Clerk so as to be received within 20 days. The court shall hear all pertinent evidence and determine the facts and upon the facts so determined, shall annul such decision if found to exceed the authority of such board, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exceptions as in other equity cases.

ARTICLE II
General Regulations

§ 300-2.1. Definitions.

For the purposes of these rules and regulations, the following words or terms used herein are hereby defined or the meaning thereof explained, extended, or limited as stated in MGL c. 41, § 81L, as amended. Other terms or words or phrases not defined herein or in the Subdivision Control Law shall be construed according to the common and approved usage of the language, but technical words and phrases and such other terms or phrases as may have acquired a particular and appropriate meaning in law shall be construed and understood according to such meaning.

ABUTTER

- A. An owner of land sharing a common property line with the owner of land referred to in a subdivision application; and
- B. An owner of land which is directly across a way from the frontage of said subdivision land.

AGENT — One or more persons designated to represent ~~the applicant before the Planning Board~~ a Town board or agency.

APPLICANT — The owner of the land referred to in an application filed with the Planning Board, or the owner's duly authorized representative.

~~AS-BUILT~~ DRAWINGS — The drawings which show the construction of a particular structure or work as actually completed.

BOARD — The Planning Board of the Town of Marion.

BUILDING — A structure, or portion thereof, either temporary or permanent, having a roof or other covering forming a structure for the shelter of persons, animals and property of any kind. No trailer or mobile home shall be used as a building, ~~except as permitted by MGL c. 40A, § 3, and Chapter 230, Zoning, § 230-6.7.~~ The term "building" shall be construed as if followed by the words "or portion thereof."

BUILDING ~~INSPECTOR~~ COMMISSIONER — The municipal official specified in the Massachusetts State Building Code ~~and the building code for the Town of Marion~~ designated as such by the Board of Selectmen.

CERTIFIED BY (OR ENDORSED BY) A PLANNING BOARD — As applied to a plan or other instrument required or authorized by the Subdivision Control Law to be recorded, shall mean, bearing a certification or endorsement signed by the majority of the members of the Planning Board, or by its Chairman or Clerk or any other person authorized by it to certify or endorse its approval or other action and named in a written statement to the Register of Deeds and Recorder of the Land Court, signed by a majority of the Board.

COMMON OPEN SPACE — A parcel or parcels of permanently protected land or an area of water, or a combination of land and water within the site designated and intended for the use and enjoyment of Town residents and/or residents of flexible development housing. Common open space may contain such complementary structures and improvements as are necessary and appropriate to its use and enjoyment.

DAYS — Refers to consecutive calendar days.

DEFINITIVE PLAN — See "plan, definitive."

DRAINAGE — The control of surface water within the tract of land to be subdivided.

DRIVEWAY — An improved access (other than a street) connecting between a street and one or more parking or lading spaces. Nothing in this definition is meant to preclude that access from being shared with abutting land by granting of a right-of-way to abutting land/lot owners. In neither case does it qualify as a way, as defined in "private way" or "right-of-way," nor does it satisfy the frontage requirements for buildable lots.

EASEMENT — A right acquired by a public authority or other person for use or control of property for utility or other designated public purpose.

FIRST FLUSH — The volume generated by the first 1.25 inches of stormwater runoff. This first flush of runoff carries the majority of accumulated pollutants from impervious surfaces. The first flush treatment volume (V t) is ~~is~~ determined by the following formula:

$$V t = (1.25 \text{ inches})(I)(\text{Site Area})$$

Where, I is the percentage of impervious area divided by 100 for residential area, the percentage impervious area is obtained from the TR55 table "Runoff curve numbers for urban area," "Residential district by average lot size."

FRONTAGE — Shall have the same definition as that used in the Zoning Bylaw.

LOT — An area of land in one ownership, with definite boundaries used, or set aside and available for use, as the site of one or more buildings.

LOT AREA — The horizontal area of the lot, exclusive of any way in a public or private way open to public usage. For computation of minimum lot area requirements, see the Marion Zoning Bylaw.

LOT, CORNER — A lot which has legal frontage on both a public way and on a proposed subdivision way, and which shall be shown on a subdivision application and shall be considered a part of that plan.

MASSACHUSETTS ~~DPW~~(MassDOT) STANDARD SPECIFICATIONS FOR HIGHWAYS, AND BRIDGES AND WATERWAYS — Shall refer to the latest edition with amendments.

MASSACHUSETTS GENERAL LAWS ANNOTATED or MGL — The General Laws of the Commonwealth of Massachusetts, Ter. Ed., with all additions thereto and amendments thereof. In the case of a rearrangement of the General Laws, any citation of particular sections herein set forth shall be applicable to the corresponding sections in the new codification.

MUNICIPAL SERVICES — Sewers, surface water drains, and other private or public utilities, including water pipes, gas pipes, electric lines, cable television lines, telephone lines, fire alarm lines, and their respective appurtenances.

OWNER — As applied to real estate, the person (hereinafter defined) holding the ultimate fee simple title to a parcel, tract, or lot of land, as shown by the record in the appropriate Land Registration Office, Registry of Deeds, or Registry of Probate.

PARK STRIP — The area between the paved road, the property line or sidewalk/bike path.

PERMANENT BENCHMARK — A permanent reference ~~point~~ with the elevation accurately established by stone bounds and referenced to the United States Coast and Geodetic Survey datum.

PERSON — An individual, partnership, corporation, or two or more individuals or a group or association of individuals, having common or undivided interests in a tract of land.

PLAN, DEFINITIVE — The plan of a subdivision as submitted to the Board for approval, to be recorded in the Registry of Deeds or Land Court when approved by the Board.

PLAN, PRELIMINARY — A plan of a proposed subdivision or ~~re-subdivision~~resubdivision of land of sufficient accuracy to be used for the purpose of discussion and review and meeting the requirements of the Subdivision Rules and Regulations.

PRELIMINARY PLAN — See "plan, preliminary."

PRIVATE WAY — ~~See Way, Private. A road, street, highway, avenue or routed passage which has not been accepted as a public way by a vote of the Town.~~

PROBABLE MAXIMUM HIGH ~~GROUND WATER~~GROUNDWATER — The ~~Probable Maximum High Ground Water shall be defined as the~~ greatest elevation above mean sea level at which ~~ground water~~groundwater is expected to occur at any point on the site. This elevation shall be determined by direct observation of ~~ground water~~groundwater in specific areas of the site and by comparison with ~~ground water~~groundwater monitoring wells in the Town of Marion. The applicant shall estimate the ~~ground water~~groundwater elevations utilizing accepted methods for calculating probable maximum ~~ground water~~groundwater elevations, such as the USU.S. Geological Survey method for estimating probable high ~~ground water~~groundwater levels in Massachusetts.

PUBLIC WAY — ~~See Way, Public. Any road which has been accepted as a public way pursuant to MGL c. 82, or any way established by court decree to be a public way by dedication, prescription or otherwise.~~

RECORD DRAWINGS — Equivalent to as-built drawings.

REGISTERED MAIL — Refers to registered or certified mail.

REPRESENTATIVE — One or more persons designated to represent the applicant before the Planning Board.

~~RIGHT-OF-WAY~~ — A strip of land owned by another but over which persons sharing the right-of-way have a right to pass and re-pass. Unless the strip meets the requirements of "private way," frontage on the way does not satisfy the requirement for buildable lots.

ROADWAY OR STREET — That portion of a way, or street layout which has been prepared and constructed for vehicular traffic.

SECONDARY STREET — See "street, secondary."

SPECIAL FLOOD HAZARD DISTRICT — The Special Flood Hazard District as established by the Marion Zoning Bylaw.

STORMWATER MANAGEMENT AREA — The portion of the property where physical stormwater management activities are conducted (i.e., treatment, retention/detention, etc.). The area includes the space for the management activities and access for maintenance.

STREET — An improved public way laid out by the Town of Marion, the Plymouth County Commissioners or the Commonwealth of Massachusetts, or a way which the Marion Town Clerk certifies is maintained by public authority as a public way, or a way in existence having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to accommodate the vehicular traffic anticipated by reason of the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and buildings erected to be erected thereon. A way shall not be a "street" with respect to any lot which does not have appurtenant to it a recorded right of access to and over such way for vehicular traffic.

STREET, DEAD-END — A street, portion of a street or combination of streets in which accessibility is limited to a single means of ingress and egress. Any proposed street which intersects solely with a dead-end street shall be deemed to be an extension of the dead-end street. Dead-end streets and their extensions,

if any, shall be measured between the sideline intersecting street and the center of the ~~turn-around~~turnaround. For the purposes of this regulation, a cul-de-sac is a dead-end street.

STREET, LOCAL — A street that, in the opinion of the Planning Board, primarily serves abutting residences and is not intended to serve through traffic.

STREET, SECONDARY — A street that, in the opinion of the Planning Board, primarily serves as a collector street for "~~Local Streets~~"local streets or as a minor through traffic way and secondarily as access to abutting residences.

SUBDIVISION — "~~The division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the Subdivision Control Law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the Clerk of the city or~~ Town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law, or (c) a way in existence when the Subdivision Control Law became effective in the ~~city or~~ Town in which the land lies, having, in the opinion of the Planning Board sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or bylaw, if any, of said ~~city or~~ Town for erection of a building on such lot, and if no distance is so required, such frontage shall be at least 20 feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the Subdivision Control Law went into effect in the ~~city or~~ Town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.~~."~~ See MGL c. 41, § 81L.

SUBDIVISION CONTROL LAW — MGL c. 41, §§ 81K to 81GG, inclusive, and any amendments thereof, additions thereto or substitutions ~~therefore~~therefor.

TOWN — The Town of Marion.

WATER SUPPLY PROTECTION DISTRICT — The Water Supply Protection District as established by the Marion Zoning Bylaws and further described in § 230-8.2 of the Marion Zoning Bylaw.

WAY or RIGHT-OF-WAY — The full strip of land designated as a way, consisting of the roadway, and any planting strips or sidewalks. A way so designated shall be available only for such uses as are customary for ways in the Town, and shall not be available for any private construction such as buildings, fuel tanks, septic systems, fences, or walls.

YARD, FRONT — Land extending across the required width of the lot and lying between the street line of the lot and the nearest line of the building. The depth of the front yard shall be the minimum distance between the building and front lot line.

ZONING BYLAW — The Zoning Bylaw of the Town of Marion.

§ 300-2.2. Submitting, completing and withdrawing applications.

- A. Application and other forms. Applicants shall submit either an approval not required plan application, a preliminary subdivision application, or a definitive subdivision application, all of which shall be submitted as required herein. Other forms required to be submitted under these rules shall be specified

by the Planning Board or its agent, and will normally be provided by the Planning Board or its agent. All plans and applications shall comply in all respects with the provisions of these rules and regulations, unless the Board authorizes a waiver therefrom in specified instances.

- B. Place of submittal and filing. The submittal of all applications for consideration by the Planning Board shall be completed by delivering all required application materials (including a copy of the notice filed at the Town Clerk's office, date stamped by said office) to the agent of the Planning Board at the Planning Board office during office hours; or during a Planning Board meeting; and by filing the notice of said submittal at the office of the Town Clerk as required herein. The applicant must check with these offices to verify hours during which they will be open. Application materials submitted to the Planning Board shall be the property of the Town, and a copy of all application materials shall be retained by the Planning Board.
- C. Notice to Town Clerk of submittal. Every person submitting an application to the Planning Board under these regulations shall concurrently file written notice at the office of the Town Clerk by hand delivery or by registered mail, postage prepaid, that such application has been submitted to the Planning Board. Said notice shall describe the land to which the plan relates in sufficient detail for identification, shall state the date when such application was submitted to the Planning Board, and shall include the name, address and daytime telephone numbers of the property owner, and of the person making application if different from the property owner. A copy of the completed application form shall be filed with said notice at the office of the Town Clerk; and a statement that such notice to the Town Clerk has been made shall be included as part of any application to the Planning Board.
- D. Status of applications.
 - (1) Within seven days of the submittal date of an application, or within seven days of any subsequent submittal date in response to a determination that any such application was incomplete, the Planning Board or its agent shall review said application and inform the applicant and the Town Clerk in writing as to whether said application is deemed complete and properly submitted. An application shall be deemed complete only if the applicant has provided all of the information required by these regulations, with the appropriate number of copies and in the appropriate format. If said application is determined to be incomplete or improperly submitted, the applicant shall receive written notice from the Planning Board or its agent listing the items or information needed for a complete and proper application. When the application is deemed complete and properly submitted by the Planning Board or its agent, it shall notify the Town Clerk in writing of the final submittal date.
 - (2) The final submittal date shall be the date that the completed and properly submitted application is received by the Planning Board or its agent. For applications that have been deemed incomplete, the applicant must agree in writing to any new submittal date in order for any additional information ~~not for~~ material to be considered part of the original application.
- E. Withdrawing applications. An applicant may withdraw a submitted application, without prejudice as to the rights set forth in MGL c. 40A, § 6 and MGL c. 41, § 81Q, by filing with the Planning Board and the Town Clerk a written statement of withdrawal. The applicant shall be responsible for all costs incurred by the Town in processing and reviewing said application, up to and including the withdrawal, and shall not be entitled to a reimbursement of any fee paid.
- F. Responsibility for information and materials. By submitting an application or request under these regulations, the applicant assumes responsibility for the accuracy and representations made or implied for all of the information and materials that constitute said application or request.

§ 300-2.3. Relation to Zoning Bylaw.

- A. Conformance. The Board shall not approve or modify and approve any plan of a subdivision of land unless all lots and other aspects of such plan conform with the Zoning Bylaw of the Town or a variance from the terms thereof has been granted by the Board of Appeals.
- B. Issuance of building permits. The official in the Town authorized to issue building permits shall not issue any permit for erection of a building until first satisfied:
 - (1) That the lot on which the building is to be erected is not within a subdivision~~;~~
 - (2) That a way furnishing the access to the lot within a subdivision as required by the Subdivision Control Law is shown on a recorded plan and that any conditions endorsed thereon limiting the right to erect or maintain buildings on such lot have been satisfied~~;~~ and
 - (3) That all other applicable requirements have been met.

§ 300-2.4. Modification, amendment or rescission of approved plans.

~~Powers.~~ The Board, on its own motion or on the petition of any interested person, shall have the power to modify, amend, or rescind its approval of a plan of a subdivision, or to require a change in a plan as a condition of its retaining the status of an approved plan, after due notice and opportunity to the owner to be heard in accordance with MGL c. 41, § 81W, as amended.

§ 300-2.5. Fees.

- A. Professional, legal, and technical assistance. The Board may assign as its agents appropriate Town officials, and may hire professional and legal technical experts to review plans and inspect improvements at the cost of the applicant.
- B. Appendix A. The fees indicated in Appendix A~~—~~₂ Planning Board Fee Schedule~~—~~₂ shall accompany the submittal of application materials of the various plans specified in the rules and regulations, to cover costs of processing, technical review, and inspection. No application shall be deemed submitted unless the appropriate fee accompanies said application. The fees shall be submitted by certified or bank check.

§ 300-2.6. Plan believed not to require approval.

- A. Submission. Any person who wishes to cause to be recorded in the Registry of Deeds or to be filed with the Land Court a plan of land and who believes that said plan does not require approval under the Subdivision Control Law~~;~~ shall submit to the Board at a regular meeting said plan, seven prints thereof, and two copies of a properly executed Form A~~—~~₂ Application for Endorsement of a Plan Believed Not to Require Approval, accompanied by the necessary evidence to show that the plan does not require approval. In order to be considered, the plan and Form 2A must be submitted to the Planning Board before ~~12:00~~ noon of the Wednesday prior to the next regular meeting. The applicant shall also submit the fee as set forth in Appendix A~~—~~₂ Planning Board Fee Schedule₂ with the application form. Said person shall file, by delivery or registered mail, a notice with the Town Clerk stating the date of submission for such determination. The Board will review the plan to determine whether it is a subdivision and whether it conforms to the standards for endorsement.
- B. Required information. Said plan shall be of a minimum dimension of 9 1/2 inches by 14 inches₂ but not to exceed a dimension of 24 inches by 36 inches, drawn at a scale of one inch equals 40 feet, and shall contain the following information:
 - (1) Identification of the plan by the name of the owner of record and the location of the land in question;

- (2) The statement "Approval Under the Subdivision Control Law Not Required," and sufficient space for the date, and all signatures of the members of the Board;
 - (3) Zoning classification and location of any zoning district boundaries that may lie within the locus of the plan;
 - (4) In the case of creation of a new lot, the remaining land area and frontage of the land in the ownership of the applicant, if any;
 - (5) Notice of any decisions by the Zoning Board of Appeals, including but not limited to variances and special permits regarding the land or any buildings thereon;
 - (6) Names of abutters from the latest available Assessor's records unless the applicant has knowledge of any changes subsequent to the latest available records;
 - (7) Distance to the nearest permanent monument; contours at the scale of available topographical maps, or, where applicable, contours at a scale sufficient to demonstrate that each lot has present vehicular access from the way serving the site;
 - (8) Location of all existing buildings, including setback and side and rear yard designations and any existing structures on any remaining adjoining land owned by the applicant and dimensions of yards relating to such structures;
 - (9) Location of any easement, or way, public or private, across the land, with a designation as to the use of the same.
- C. Denial of endorsement. If the Board determines that the plan does not require approval under the Subdivision Control Law, or does not conform to the standards for endorsement hereunder, it shall, within 21 days of submission of said plan, so inform the applicant and return the plan. The Board shall also notify the Town Clerk of its determination.

§ 300-2.7. Adequacy of access.

- A. General plans shall be endorsed as not requiring approval under the Subdivision Control Law and subdivision plans shall be approved only if each building lot to be created by such plan has adequate access as intended under the Subdivision Control Law, MGL, c. 41, §§ 81K through 81GG.
- B. Standards of adequacy. Streets within a subdivision shall be considered to provide adequate access, if, and only if, said streets comply with the standards established in the Town's Subdivision Rules and Regulations. Ways providing access to streets within a subdivision shall be considered to provide adequate access where, prior to construction on any lots, the applicant for subdivision approval assures that such access will be in compliance with the Subdivision Regulations for right-of-way width, pavement width, maximum grade, and sight distance requirements applicable to ways within a subdivision.
- C. Direct access. A subdivision that has its main access to an existing way in an adjoining town, but has some of its lots within the geographical boundaries of the Town of Marion, must provide additional direct and exclusive access to a public way within the Town of Marion. This access shall serve as a means for the residents whose lots lie within Marion to be served by and to reach Marion Town services. The lots and ways that serve the lots within the Marion boundaries must meet all of the requirements of the Zoning Bylaws and of the Subdivision Rules and Regulations of the Town of Marion. No building permit for building on any of the lots within the Marion boundaries shall be issued until the way or ways connected directly to Marion ways are physically completed.

- D. Multiple access. When a subdivision road is over 500 feet in length, or a subdivision contains more than 35 homes, a second emergency access sufficient in construction and width (but not necessarily paved) to allow emergency vehicles must be provided.
- E. Obligations. The Board may require, as a condition of its approval of a subdivision plan, that the applicant dedicate or acquire and dedicate a strip of land for the purpose of widening access ways to a width as required in these regulations, above, and that ~~the~~ applicant make physical improvements within such way or compensate the Town for the cost of such improvements in order to meet the standards specified above.
- F. Waiver of access standards. The Board may waive strict compliance with these access regulations only upon its determination, following consultation with the Selectmen, Road Superintendent, Police Chief, or professional consultants, that the way in fact will be otherwise sufficient to serve the needs for access to serve potential uses of land abutting on or served by the way in question.

§ 300-2.8. Waivers.

- A. General. Pursuant to MGL c. 41, § 81R, strict compliance with these rules and regulations may be waived when, in the judgment of the Board, such action is in the public interest, not inconsistent with the Subdivision Control Law, and promotes public health and safety.
- B. No waiver(s) shall be granted unless:
 - (1) Application for a definitive plan hearing ~~include~~includes in writing all requested waivers.
 - (2) A listing of the above waivers and a brief description of them are included in the existing hearing notice.
 - (3) The following procedure shall apply if an applicant requests further waivers: the hearing shall be continued so that one week's public notice of the continued hearing and additional waiver(s) can be given by a single legal advertisement in a local paper.
 - (4) The reference to the Planning Board's waiver policy document in the original hearing notice shall be considered adequate public notice for any waiver(s) proposed by the Board itself at any time during the hearing process.
 - (5) The nature of the waiver(s) requested and the reason(s) for granting or denying it shall be recorded as part of the Planning Board minutes.
 - (6) Waiver(s) granted by the Planning Board shall be shown on the final plan submitted for approval.

§ 300-2.9. Number of dwellings per lot.

Not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision or elsewhere in the Town. Not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision, or elsewhere in the Town, without the consent of the Planning Board, and such consent may be conditional upon the provision of adequate ways furnishing access to each site for such a building, in the same manner as otherwise required for lots within a subdivision. -

**ARTICLE III
Preliminary Plans, Definitive Plans and Residential Compound Plans**

§ 300-3.1. Pre-submission review.

Prior to investing in extensive professional design costs for preparation of subdivision plans, the applicant is invited to review the proposed development of the parcel of land with the Board, in order to explore general conditions involving the site and to discuss potential problems. Pencil sketches, which need not be professionally prepared, will assist in this discussion, and should show the critical features of a preliminary plan. In some cases, this pre-submission review may eliminate the need for the formal submission of a preliminary plan.

§ 300-3.2. Preliminary plans.

A. Submission.

- (1) A preliminary plan of a subdivision may be submitted and for any nonresidential subdivision shall be submitted by the subdivider to the Board and through the Board to the Board of Health for discussion and approval, modification or disapproval by the Board. The submission of such a preliminary plan shall be made of Form B—, Application for Approval of a Preliminary Plan —, and will enable the subdivider, the Board, the Board of Health, other municipal agencies, and owners of property abutting the subdivision to discuss and clarify any aspects of or problems with such subdivision before a definitive plan is prepared. For this reason, the Board strongly encourages the submission of such preliminary plans in every case. Seven copies of the preliminary plan shall be submitted to the Board at a regularly scheduled meeting, together with the fee set forth in Appendix A—, Planning Board Fee Schedule. Copies of the plan may be examined by the public during regular business hours of the Town Hall.
- (2) For subdivisions of ~~eight~~five or more lots, two subdivision plans shall be submitted at the preliminary plan stage: 1) a flexible development plan, and 2) a conventional plan. The subdivider is also strongly encouraged to consider submission of a plan for a conservation subdivision.

B. Contents.

- (1) The preliminary plan may be drawn on tracing paper with pencil, preferably at a scale of one inch equals 40 feet, or other suitable scale acceptable to the Board, shall be clearly designated as "Preliminary Plan," and shall show:
 - (a) Subdivision name, boundaries, North point, date, and scale;
 - (b) Name and address of record owner, applicant, designer, engineer, and surveyor;
 - (c) Names of all abutters as determined from the most recent Town tax list;
 - (d) Existing and proposed lines of streets, ways, easements, and public areas within the subdivision;
 - (e) Location, direction, names, and streets, present widths of ways and public or private ways bounding, approaching, or within ~~reasonable~~the subdivision;
 - (f) Location, names, and present widths of streets bounding, approaching, or near the subdivision;
 - (g) Topography of the land in no greater than two-foot contours, including all resource areas as defined under 310 CMR 10.00 and all natural watercourses, including vernal pools and salt marshes;

- (h) Proposed system of drainage, including existing natural waterways, in a general manner, but including drainage both within and adjacent to the subdivision;
 - (i) Approximate boundary lines of proposed lots, with approximate areas and dimensions;
 - (j) Estimates of the grades of proposed streets or profiles, where required by the Board;
 - (k) Major site features such as existing stone walls, fences, buildings, large trees and wooded areas, rock ridges and outcroppings, wetlands within 100 feet of the subdivision, perennial streams within 200 feet of the subdivision, and other water bodies;
 - (l) Identification of any land area lying within 500 feet of any property valued under the provisions of MGL c. 61A, as amended;
 - (m) Adjacent natural resources;
 - (n) Locus plat at an appropriate scale to locate the subdivision with the Town.
- (2) The preliminary plan shall be accompanied by a statement of existing zoning, any easements, covenants, and restrictions applying to the area proposed to be subdivided, and a list of any waivers from these regulations requested by the applicant.
- (3) During discussion of the requirements set forth in Subsection A(1), the complete information required for a definitive plan and the financial obligations of applicant will be addressed.
- C. Site visit. After the regular Board meeting at which the preliminary plan is first discussed, or a definitive plan submitted without a prior preliminary plan, the Board and/or its agent may schedule a site visit to the proposed subdivision, accompanied by the applicant and his ~~agents or~~ representatives. In order to facilitate inspection and review of the site of the proposed subdivision, temporary staking will be required along the center line of all proposed roads in the subdivision before said site visit, or if impractical, the Board may permit a suitable alternative procedure.
- D. Decision. The Board shall, in conformance with MGL c. 41, § 81S, approve such preliminary plan with or without modifications, or disapprove such preliminary plan with reasons ~~therefore~~therefor.
- (1) Approval of a preliminary plan, with or without modifications, does not constitute approval of a subdivision. Such approval does facilitate the final approval of a subdivision through submittal of a definitive plan.
 - (2) The Board shall notify the Town Clerk in writing of its decision on a preliminary plan in accordance with MGL c. 41, § 81S, as amended.
 - (3) The submission of a preliminary plan for examination by the Board shall not be deemed the submission of a definitive plan of a subdivision of land for approval by the Board under MGL c. 41, § 81T, and the action or decision of the Board as to such preliminary plan shall not prejudice its action or decision as to the definitive plan.

§ 300-3.3. Definitive plans.

A. Submission.

- (1) A definitive plan of a subdivision may be submitted by the subdivider to the Board for review and approval, modification or disapproval by the Board. The submission of such a definitive plan shall be made on Form C—, Application for Approval of a Definitive Plan. If the applicant for subdivision has chosen not to previously submit a preliminary plan, then for subdivisions of eight or more lots, two plans shall be submitted:

- (a) Flexible development plan; and
 - (b) A conventional plan.
- (2) Any person submitting a definitive plan of a subdivision of land to the Board for approval shall file therewith the following:
 - (a) Twenty prints of the definitive plan, dark line on white background. Prints will be referred to Town boards and departments for review~~;~~.
 - (b) Accompanying statements as required in Subsections C and D below~~;~~.
 - (c) One properly executed application form and any other required forms on file with the Board ~~(see Appendix C);~~.
 - (d) The fee set forth in Appendix A, ~~Application~~ Planning Board Fee Schedule.
 - (e) A certified list of abutters signed by the Board of Assessors~~,~~ with business~~-~~sized envelopes, stamped and addressed to each abutter.
 - (f) A one~~-~~page summary of the proposed project and a letter~~-~~sized copy~~,~~ 8 1/2 inches by 11 inches, of the original drawing of the definitive plan of sufficient clarity for reproduction.
- (3) The applicant shall file one copy of the definitive plan and ~~one copy~~ two copies of the application form with the Board of Health.
- B. Contents. The definitive plan shall be prepared by a registered professional engineer and/or land surveyor, and shall be clearly and legibly drawn in black India ink upon tracing cloth D-r Mylar, and shall be 24 inches by 36 inches in overall dimensions~~,~~ with a one~~-~~inch margin left on one ~~24 inches~~ twenty-four-inch edge of each sheet for filing purposes. The prints shall be at a scale of not less than one inch equals 40 feet, or such other scale as the Board may prescribe as adequate to show details clearly. Profiles of proposed streets shall be drawn to the same horizontal scale as the plan, and with vertical scale 10 times larger unless otherwise permitted by the Board, on separate tracing cloth or Mylar of the same dimensions as the plan sheets. If multiple sheets are used to show the subdivision, they shall be accompanied by an index sheet showing the entire subdivision. The definitive plan shall show the following information:
 - (1) A subdivision name, boundaries, North point, date, and scale;
 - (2) A locus map at a scale of one inch equals 1,000 feet showing the proposed streets in relation to existing streets in the immediate vicinity;
 - (3) Name and address of record owner, applicant, and engineer or surveyor, with seal;
 - (4) Where the owner or subdivider also owns or controls unsubdivided land adjacent to or directly across the street from the land shown on the definitive plan, the applicant shall submit a sketch plan showing possible or prospective street layout in the event that such unsubdivided land is developed, and shall also show the present drainage for such unsubdivided land, natural and constructed~~;~~.
 - (5) Boundary lines of bordering adjacent land or of land across the street from property being subdivided and names of abutters thereon as determined from the certified list of abutters;
 - (6) Existing and proposed lines of streets, ways, easements, and any public or common areas within the subdivision~~;~~.

- (7) Location, direction, names and present widths and grades of streets and public or private ways bounding, approaching, or within reasonable proximity of the subdivision;
- (8) Sufficient data to determine the location, direction, and length of every street and way line, lot line, and boundary line so as to establish these lines on the ground. The location of base lines and necessary data from which bearings and elevations may be determined may be furnished by the County Engineer's office. Should the Town establish a coordinate system, all street corners must be tied into the nearest triangulation station. The relative error of closure of property line traverse shall not be less than one part in 12,000. A signed statement to this effect shall appear on the engineer's tracing cloth drawing. A copy of traverse notes shall be furnished to the Board upon request;
- (9) Location and identification of all existing buildings and site features such as stone walls, fences, large trees and wooded areas, rock ridges and outcroppings, floodplain areas, wetlands within 100 feet of the subdivision, perennial streams within 200 feet of the subdivision, and other water bodies, including depth of water and direction of flow within or adjacent to the proposed subdivision;
- (10) Existing and proposed topography with two-foot contours based on mean sea level datum, or at a suitable interval as required by the Board. All buildings and physical features of abutting property that are within 50 feet of the boundary must be shown;
- (11) Acreage of each lot, lot lines, bearings and length thereof in conformity with the Zoning Bylaw in each case;
- (12) Location of existing and proposed monuments, hydrants, public utility facilities, water pipes, fire ponds and cisterns, and wells within the subdivision;
- (13) Park or open areas suitably located for conservation, playground, or recreation purposes within the subdivision, if any;
- (14) Proposed storm drainage of land, including existing natural waterways and the proposed disposition of water from the proposed subdivision to either adequate natural drainage channels or artificial means of disposal thereof. Four copies of a runoff plan and calculations using the rational formula (as described in Seelye's Design Data Book for Civil Engineers, latest edition), based on a ten-year expectancy period, to determine the necessary pipe sizes, which can be no less than 12 inches in diameter. Roadways crossing brooks with a drainage area in excess of 10 acres shall be based on a twenty-five-year expectancy period. Pipe size, capacity, depth of flow and velocity of flow shall be included;
- (15) Location and purpose of all existing and proposed easements;
- (16) Location and species of proposed street trees, and/or individual trees or wooded areas to be retained within 40 feet of the sidelines of each street;
- (17) Street plans and profiles must show the percent of grade, radii and length of curves, the point of curvature, and the point of tangency of curves;
- (18) Street profiles on the center lines and sidelines of proposed streets at a horizontal scale of one inch equals 40 feet and vertical scale of one inch equals four feet, or such other scale acceptable to the Board. Profiles shall show elevation of sills of all existing structures. Present and proposed elevations must be shown at least every 50 feet and must refer to the Town base, mean sea level, if bench available within 2,000 feet of subdivision. Profile plans of roadways and appurtenances shall be derived from "on the ground" topography. Profile plans shall show roadway cross-sections together with locations of proposed underground utilities, including

sanitary and storm sewer lines, water lines and their appurtenances, along with details of all structures, ~~headwall~~headwalls, and retaining walls;

- (19) Approximate proposed location of principal building on each lot to comply with the provisions of the Zoning Bylaw, whenever uncertainty exists or upon the request of the Board, the Board of Health, or the Conservation Commission;
 - (20) Location of a minimum of three benchmarks, located by ~~State plain~~state plane data;
 - (21) Suitable space to record the action and signatures of the Board members on each sheet of the definitive plan in the lower right-hand corner;
 - (22) Location of existing utilities, underground or overhead, indicating size, type, and location of easement;
 - (23) An overlay at the same scale as the definitive plan showing the ~~SCS~~NRCS interpretation of suitability for on-site sewage disposal, or showing the USGS surficial geology, or both. Board of Health sanctioned testing required under Title 5 (310 CMR 15.00) may be substituted for this overlay. Test pit logs for locations selected by the Planning Board and shown on one of the above overlays, with not more than one pit per four proposed lots, selected to reveal general patterns of subsurface characteristics, after consultation with the Board of Health and the Conservation Commission;
 - (24) Where connection to the public water system is not proposed, information indicating why such connection is not feasible, description of provisions to be made for water for fire fighting, and information adequate to allow determination of compliance with these regulations regarding potable water quality and quantity;
 - (25) An erosion and dust control plan, indicating the erosion and dust control measures to be employed, including description of locations of temporary stockpiles, spoil areas, temporary drainage systems, slope stabilization techniques, sediment basins, etc., and narrative description of how dust is to be controlled and how erosion from individual lots onto streets and into drainage systems is proposed to be controlled and, in the case of subdivision of more than 15 lots, review comments on the plan by the Conservation Commission and by the ~~Soil~~Natural Resources Conservation Service or by others acceptable to the Board as expert in soil erosion;
 - (26) Where located within the Special Flood Hazard District, base flood elevation (the level of the one-hundred-year flood data) for proposals greater than five acres;
 - (27) An engineer's estimate of materials with quantities required to construct roadway, utilities and appurtenances for plan as submitted.
- C. Accompanying statements and data. The definitive plan shall be accompanied by four copies of the following written statements:
- (1) Existing zoning and any easements, covenants and restrictions applying to the area proposed to be subdivided.
 - (2) Logs of results of all test pits made.
 - (3) Data and proposed arrangements for water supply, sewerage, and sewage disposal, including all appurtenances, as required by the Board of Health.
 - (4) Drainage calculations prepared by the applicant's engineer, including design criteria, drainage area and other information sufficient for the Board to verify the size of any proposed drain,

swale, drainfield, culvert, bridge, or catch basin. Said calculations are to be made separately for each drainage facility, showing its location, the total upstream drainage area, the percentage of impervious surfaces in the drainage area, the runoff per acre, the design runoff, facility size, slope and capacity, and the velocity of water through it. Describe any areas subject to ponding or flooding, existing or proposed flood control or wetland easements, estimated increase of peak runoff caused by altered surface conditions, and methods to be used to return water to the soils.

- (5) A complete list of any waivers requested from these Subdivision Rules and Regulations.
- (6) Common land and ways.
 - (a) As part of the submission of a definitive plan, the applicant must state how he proposes to deal with any common land intended for the use of all residents of the development and all ways within the development. The applicant must elect one of the following options:
 - [1] Convey by deed to each owner singly and in total so that each owns to the center of the way abutting the owner's property and a share of any common land equal to the proportion that owner's land bears to the total land of all owners.
 - [2] Convey by deed to a perpetual trust established to be responsible for maintenance of all ways and common land.
 - [3] Petition the Town to accept the way(s). Election of this option shall require the selection of either Option [1] or [2] above to be implemented if the Town refuses to accept the way(s).
 - (b) The option selected shall be recorded on the definitive plan and must be implemented before a bond, surety or covenant covering improvements in the development may be released.
 - (c) Evidence of compliance with this section shall consist of copies of deeds containing wording to implement one of the options for all lots sold up to the time release of the bond, surety, or covenant is requested. Deeds for a minimum of 20% of all lots in the subdivision, but no less than two lots, must be submitted to satisfy this requirement.
 - (d) When driveways are shared by more than one lot, suitable permanent easements must be included in the deed for the lot for which the driveway passes, and this fact shall be included in the deeds of the other lots served by the driveway. Reference to these easements shall be shown on the definitive plan.

D. Development impact statement (DIS). The impact of the proposed subdivision is to be described according to the following criteria, except that in the case of subdivisions containing 20 or fewer units, the Board will normally waive some or all of these requirements. Unless this requirement is waived by the Board, the DIS shall be prepared by an interdisciplinary team including a registered landscape architect or architect, a registered professional or civil engineer, and a registered surveyor.

- (1) Physical environment.
 - (a) Describe the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, archeological, scenic and historical features or structures, location of significant viewpoints, stone walls, trees over 16 inches in diameter, trails and open space links, and indigenous wildlife.

- (b) Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.
- (2) Surface water and subsurface conditions.
 - (a) Describe location, extent, and type of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the project.
 - (b) Describe any proposed alterations of ~~shore lines~~shorelines, marshes, or seasonal wet areas.
 - (c) Describe any limitations imposed on the project by soil and water conditions and methods to be used to overcome them.
 - (d) Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the development. For subdivisions located in whole or in part within the Town's Water Supply Protection District, as established in the Zoning Bylaw, this shall include an analysis of drainage system alternatives, examining the concentration and speed of the transport of contaminants.
 - (e) Discussion of the stormwater management system, beginning with the existing surface drainage patterns in the area of the site and downstream. This discussion shall be consistent with ~~Section IV(F) of the~~ § 300-4.6, Stormwater Management ~~Section-management.~~ It shall also provide a description of maintenance requirements and associated annual costs; for the stormwater management system.
 - (f) The contents and submittal requirements shall be as described in ~~Appendix B: Requirements for contents of Stormwater Management Plans and Section IV(F): Drainage.~~ § 300-4.6, Stormwater management.
- (3) Circulation systems.
 - (a) Explain the reasons for location of streets and intersections as shown on the definitive plan, with specific reference to criteria set forth in § 300-4.1 below.
 - (b) Project the number of motor vehicles to enter or depart the site per average day and peak hour. Also state the number of motor vehicles to use streets adjacent to the proposed subdivision per average day and peak hour. Such data shall be sufficient to enable the Board to evaluate ~~(a1)~~ existing traffic on streets adjacent to or approaching the proposed subdivision, ~~(b2)~~ traffic generated or resulting from the proposed subdivision, and ~~(c3)~~ the impact of such additional traffic on all ways within and providing access to the proposed subdivision. Actual study results, a description of the study methodology, and name, address, and telephone number of the person responsible for implementing the study; shall be attached to the DIS.
- (4) Support systems.
 - (a) Water distribution. Discuss the types of wells proposed for the site, means of providing water for fire fighting, and any problems unique to the site.
 - (b) Sewage disposal. Discuss the type of system to be used, suitability of soils, procedures and results of percolation tests, and evaluate impact of disposal methods on surface water and groundwater.

- (c) Refuse disposal. Discuss the location and type of facilities, the impact on existing Town refuse disposal capacity, hazardous materials requiring special precautions.
 - (d) Fire protection. Discuss the type, location, and capacity of fuel storage facilities or other flammables, distance to fire station, and adequacy of existing fire-fighting equipment to confront potential fires on the proposed site.
 - (e) Recreation. Discuss the distance to and type of public facilities to be used by residents of the proposed site, and the type of private recreation facilities to be provided on the site.
 - (f) Schools. Project the increase to the student population for nursery, elementary, junior high and high school levels, also indicating present enrollment in the nearest public schools serving these categories of students.
 - (g) Description of proposed utilities (i.e., water, sewer, cable, telephone, electric and gas), including points and methods of connection and capacity of the existing system.
- (5) Phasing. Where development of the subdivision will require more than one year, indicate the following:
- (a) Describe the methods to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles. Describe the approximate size and location of portion of the parcel to be cleared at any given time and length of time of exposure.
 - (b) Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into subdivision development.

§ 300-3.4. Review of definitive plans.

- A. Board of Health as to suitability of the land. The applicant shall file with the Board of Health two prints of the definitive plan. The Board of Health shall, within 45 days after filing of the plan, report to the Board in writing and shall make specific findings as to which, if any, of the proposed lots shown on such plan cannot be used for building sites without injury to the public health, or is unsuitable because of drainage conditions. The Board of Health shall make specific findings and state reasons ~~therefore~~therefor in such report, and, where possible, shall make recommendations for the adjustment thereof. The Board of Health shall determine the extent of soil evaluation, which may include deep test holes, percolation tests, and test borings, and shall determine the number of tests to be required. At the time of the filing of the definitive plan, the applicant shall stake all proposed lots and mark proposed lot numbers on said lots for identification to facilitate review by the Board of Health.
- B. On-site wastewater disposal. Notwithstanding Subsection A, a permit to construct an individual sewage disposal system for sanitary wastewater disposal shall be obtained from the Board of Health for each individual lot prior to the issuance of a building permit. A condition shall be recorded on the definitive plan as follows: "No building or structure shall be built or placed upon any lot without a permit from the Board of Health," or words to this effect.
- C. Other Town officials. Before approval of a definitive plan is given, the Board will obtain appropriate checks on the engineering and survey information shown on said plan, and written statements that the proposed improvements shown are laid out to the satisfaction of the official, as follows:

- (1) As to the design of the street system, location of easements, and design of sewerage, water, and drainage systems, including appurtenances: the planning consultant or engineer designated by the Board;
 - (2) As to location, size, and species of street trees: the Tree Warden.
 - (3) As to the form of easements, covenants, and performance guarantee: Planning Board Legal Counsel.
 - (4) As to location of hydrants, fire ponds and cisterns, and with regard to fire safety: the Fire Chief.
 - (5) As to street safety: the Police Chief.
- D. Public hearing. Before approval, modification, or disapproval of a definitive plan is given, a public hearing shall be held by the Board. Notice of such hearing shall be given in accordance with the provisions of MGL c. 41, § 81T, as amended. A copy of said notice shall be mailed, by certified mail, to the applicant and to all owners of land submitted on Form D—, Certified List of Abutters.
- E. Decision. After the public hearing, the Board in due course will approve, modify and approve, or disapprove the definitive subdivision plan submitted. Criteria for action by the Board shall be the following:
- (1) Completeness of submissions; and technical adequacy of all submissions;
 - (2) Determination that development at this location does not entail unwarranted hazard to safety, health and convenience of future residents of the development or of others because of possible natural disasters, traffic hazard, or other environmental degradation-;
 - (3) Conformity with the requirements of Articles III and IV herein, and the Zoning Bylaw;
 - (4) Determination, based upon the community and environmental impact statement (where submitted), that the subdivision as designed will not cause substantial and irreversible damage to the environment, which damage could be avoided or ameliorated through an alternative development plan.

§ 300-3.5. Rescission of Planning Board approval.

- A. Failure to obtain endorsement. The applicant's failure to obtain the endorsement of the Planning Board within six months from the date of the approval of the definitive plan shall result in the automatic rescission of said approval.
- B. Failure to construct. The applicant's failure to complete the construction of the ways, utilities, and services shown on the definitive plan within three years from the endorsement of said plan shall result in the automatic rescission of the approval of said plan. Prior to the expiration of said three-year period, applicant may request, in writing, an extension of one year to complete the construction of the ways, utilities, and services shown on the definitive plan for good cause, which may be granted by the Planning Board upon the vote of a majority of its members then present and voting.

§ 300-3.6. Performance guarantees.

- A. Final approval with bond or surety.
 - (1) Before approval of a definitive plan, the subdivider shall either file a performance bond, or deposit money or negotiable securities in an amount determined by the Board, in accordance with the procedure set below, to be sufficient to cover the cost plus 10% of all or any part of

the improvements specified herein, or follow the procedure set forth below. Letters of credit are not acceptable. Passbooks shall be accompanied by a form assigning same to the Town of Marion. A bond estimate may be requested by the Board; such estimate shall remain effective for 90 days. The estimate shall reflect the cost for the Town to complete work under adverse conditions, which may necessitate legal fees, public bidding, and additional Town staff time. Ordinarily, the Board shall require an amount covering the total cost of construction of all roads and other improvements within and without the subdivision. Such bond or security, if filed or deposited, shall be approved as to form and manner of execution by the Planning Board Legal Counsel, and as to sureties by the Town Treasurer. Such bond or security shall be contingent on the completion of such improvements not later than three years from the date of the endorsement of the definitive plan. Failure to so complete shall result in the automatic rescission of the approval of the definitive plan by the Board, unless the Board extends said period, for good cause shown, after the written request of the applicant prior to the expiration of said period.

- (2) In determining the amount of the bond or surety, the Board shall be guided by the following formula in setting the sum of the security:

- (a) The Board's estimate of the cost; plus;
- (b) A ~~10%~~ten-percent margin of error; plus
- (c) An appropriate rate of inflation over a five-year period.

- B. Final approval with covenant. Instead of filing a bond or depositing surety, the subdivider may request approval of the definitive plan on condition that no lot in the subdivision shall be sold, and no building shall be erected thereon, until the improvements specified in Article V are constructed and installed so as to adequately serve said lot or lots. Such covenants shall be executed and duly recorded by the owner(s) of record, and shall run with the land. Proposed covenants shall be submitted with the definitive plan, and shall be approved as to form by the Town Counsel or Special Town Counsel. Such covenant shall state that the improvements shown on the definitive plan shall be completed not later than three years from the date of the endorsement of the definitive plan. Failure to so complete shall result in the automatic rescission of the approval of the definitive plan by the Board, unless the Board extends said period, for good cause shown, after the written request of the applicant prior to the expiration of said period. Covenants and stated conditions therein shall be referred to on the plan and recorded in the Registry of Deeds. The subdivider shall promptly, after recording, send a copy of the covenant, showing book and page number, to the Board.

- C. Converting covenant to another performance guarantee.

- (1) If the applicant desires that lots be released from a covenant and that the improvements remaining to be constructed or installed be secured by another form of performance guarantee, a formal written request shall be sent to the Planning Board by registered mail, which sets forth and includes:
 - (a) The extent and scope of remaining work to be completed to satisfy the requirements for the construction or installation of all required ways and municipal services; and
 - (b) An estimate, pursuant to these regulations, which reflects all remaining costs related to the construction of all required ways and installation of all required municipal services; and;
 - (c) The form and type of guarantee being given to the Planning Board to secure all remaining improvements.

- (2) The Planning Board or its agent will make a determination as to the sufficiency of the submitted estimate, and, if such estimate is accepted, a new performance guarantee will be given to the Planning Board. Upon acceptance by the Planning Board of the new performance guarantee, all applicable lots shall be released from the covenant.
- D. Converting bond, deposit, or agreement to covenant. If the applicant desires to secure by means of a covenant the construction of ways and the installation of municipal services in a portion of a subdivision for which no building permits have been granted nor any lots have been sold, and to have the Planning Board release the bond, deposit of money or negotiable security, or agreement and mortgage previously furnished to secure such construction and installation, the applicant shall submit to the Planning Board a reproducible tracing and three contact prints of the reproducible tracing of the definitive subdivision plan, limited to that part of the plan which is to be subject to such covenant. Upon approval of the covenant by the Planning Board, reference thereto shall be inscribed on such section of the plan, and it shall be endorsed by the Planning Board and recorded with the covenant at the expense of the applicant. Certified copies of all documents which the applicant records at the Registry of Deeds shall be provided to the Planning Board as set forth in these regulations.
- E. Using performance guarantee in case of default. If the applicant fails to complete the construction and installation work to the satisfaction of the Planning Board and in compliance with all applicable agreements, plans, regulations, and specifications, the Planning Board shall be entitled to enforce any bond or to use any deposit or other securities for the benefit of the Town to the extent necessary to complete all such required work without delay. The performance guarantees shall be used to cover all costs to the Town of completing such construction and installation. The Town, at its option, may enter upon the premises of the subdivision and itself, or through others, supply whatever materials and perform whatever work it deems necessary to remedy such failure and complete all work called for to be performed by the applicant. If the performance guarantee posted by the applicant is not sufficient to complete the required subdivision improvements or to remedy any failure of installed improvements, the Town, at its option, may initiate proceedings to recover the additional costs necessary from the applicant to correct and complete all required work. The proceedings shall include an amendment to the approved subdivision plan in accordance with these regulations to increase the amount of the performance guarantee. If the applicant does not provide the additional security, the Planning Board may initiate appropriate legal action to ensure compliance.

§ 300-3.7. Endorsement and recording.

- A. Certificate of approval. The action of the Board with respect to any definitive plan shall be by vote, copies of which shall be certified and filed with the Town Clerk and sent by registered mail to the applicant. If the Board modifies or disapproves such plan, it shall state in its vote the reason for such modification or disapproval. Final approval, if granted, shall be endorsed on the original drawing of the definitive plan by the signatures of a majority of the Board, but not until the statutory twenty-day appeal period has elapsed following the filing of the certificate of the Board's action with the Town Clerk and said Clerk has notified the Board that no appeal has been filed.
- (1) After the definitive plan has been approved and endorsed, the applicant shall furnish the Board with eight blueprints and the original thereof. The Planning Board, upon receipt of the blueprints and the original, shall send one blueprint to each of the following boards or supervisors of the Town of Marion: Fire Department, Conservation Commission, Board of Health, Board of Assessors, Municipal Light Board, and Department of Public Works, and shall retain the original and two copies for its own files.
 - (2) Final approval of the definitive plan does not constitute the laying out or acceptance by the Town of streets within a subdivision.

- B. Recording of plan. Within 30 days after the return of an approved plan, the applicant shall cause to be recorded in the Plymouth County Registry of Deeds, and in the case of registered land with the Recorder of the Land Court, a copy of the approved definitive plan and accompanying covenants and agreements, if any. Following plan approval, endorsement, and recording, the applicant shall provide the Board with five prints of the definitive plan, one of which shall be certified by the Registry of Deeds as having been recorded, and one copy of final covenants and restrictions, noting book, page number, and date of recording for each. One copy of the definitive plan shall be forwarded to the Building ~~Inspector~~Commissioner by the Board.

§ 300-3.8. Submission of evidence of satisfactory performance.

~~Submission.~~ Before the Board shall finally release a performance bond or a deposit, or in the case of approval with covenants, issue a final release of a covenant, all held pursuant to ~~[Section 3500,]~~§ 300-3.6 above, the applicant shall:

- A. File with the Board a certified copy of the layout plan of each street in the subdivision marked "As Built." In the case of approval with covenants, the applicant may show only the street or streets serving the lots for which a release is desired on the layout plan. Certification shall be by a registered professional engineer or land surveyor, and shall indicate that streets, storm drains, sewers, water mains, and their appurtenances have been constructed in accordance with said plan and are accurately located as shown hereon.
- B. Obtain and submit to the Board written evidence that the required improvements, as set forth herein, have been completed to the satisfaction of the official listed below:
 - (1) For the planting of any required street trees: ~~;~~ Tree Warden;
 - (2) For the placing of monuments and construction of all other required improvements and the performance of all other required work: ~~;~~ Planning Board and/or its designated agent;
 - (3) For streets, drainage and stormwater management, in conformance with the approved definitive plan: Planning Board and/or its designated agent;
 - (4) For underground wiring, water mains, sanitary sewers, storm sewers, hydrants, fire ponds, and fire alarms, as in conformance with the approved definitive plan: Planning Board and/or its designated agent.
- C. The applicant shall submit written evidence that all of the required improvements stated in Subsection B have been in place 12 months without damage, or, if damage has occurred, that such damaged improvements have been repaired to the satisfaction of the Board.

§ 300-3.9. Release of performance guarantee.

- A. General. Upon completion of the improvements required under § 300-3.8B, or the performance of any covenant with respect to any lot, the applicant shall send by registered mail to the Town Clerk a statement, in duplicate, that said construction or installation in connection with any bond, deposit, or covenant has been completed in accordance with the requirements of Article IV. Such statement shall contain the name and address of the applicant, and the date of filing with the Town Clerk. The Town Clerk shall forthwith furnish a copy of the statement to the Board. If the Board determines that said construction or installation has been completed, in accordance with §§ 300-3.7 and 300-3.8 above, it shall release the interest of the Town in such bond or deposit and return the bond or deposit to the person who furnished same, or issued a release of covenant in a form acceptable for recording. If the Board determines that said construction or installation has not been completed, it shall specify to the applicant in writing the details wherein said construction or installation fails to comply with the

provisions of Article IV. Upon failure of the Board to so notify the applicant within 45 days after the receipt by the Clerk of said statement, all obligations under the bond shall cease and terminate by operation of law, and the deposit shall be returned, and any covenant shall become void. In the event that such forty-five-day period expires without notification by the Board, or without the release and return of the bond, or the return of the deposit, or the release of the covenant, the Town Clerk shall issue a certificate to such effect, duly acknowledged, which shall be recorded by the applicant.

- B. Ways and services. The Board shall release from covenants only those lots for which installation and construction of ways and services, including drainage facilities, have been completed, in accordance with these rules and regulations. The applicant shall submit the appropriate form when applying for the release of a lot from a covenant.
- C. Pavement. The Board shall not release any bond, deposit, or covenant nor shall a building permit be granted for any lot until the first course of pavement has been installed with manhole covers and other structures set therein at the level of such first course.

§ 300-3.10. Residential compounds.

- A. Purpose. The purpose of this section- is to provide qualified subdividers an option to develop a parcel of land under less stringent requirements, where, and only where, the Board determines that such alternative procedures will promote development of the parcel in the best interest of the Town, considering the factors specified in Subsection C below. The submittal of a residential compound plan (RCP) shall be treated as the submittal of a definitive plan for the purposes of the Subdivision Control Law. The developer may, at his option, first submit a preliminary plan. The approval of a residential compound shall not be construed as denial of the right to subdivide the property, and the applicant shall retain all rights to submit a plan under Sec. II.B and III.B, herein. Applicants are advised to see § 230-5.1, Note 11, of the Zoning Bylaw for provisions regarding reduced lot frontage within a residential compound.
- B. Eligibility.
 - (1) Applicants for subdivision of land contained entirely within the Residence A, B, C or D ~~Districts~~District may request that their proposal be handled as a residential compound plan. The requirements for development of a residential compound are less stringent than for a subdivision under § 300-3.3 herein. Prior to investing in extensive professional design costs for preparation of a RCP, the applicant is invited to review the proposed development of the parcel of land with the Board, in order to explore general conditions involving the site and to discuss potential problems. Pencil sketches, which need not be professionally prepared, will assist in this discussion, and should show the critical features described in Subsection D below.
 - (2) To qualify for consideration as a RCP, the subdivision must satisfy all of the following conditions; provided, however, the satisfaction of the following conditions shall only result in rendering the plan eligible for further consideration by the Board pursuant to Subsection C below, and does not guarantee approval-:
 - (a) The RCP must create at least two but not more than six lots and have a minimum of 100 feet of frontage on an existing public way in Marion.
 - (b) All lots so created shall be accessed by a common private way created herewith.
 - (c) Each lot shall have at least 50 feet of frontage on the common private way and shall contain 150% of the minimum area requirement for the district in which it is located; provided, however, that the contiguous uplands area required to compute such minimum

lot area shall be based upon the minimum lot area requirement for the district in which the lot is located, and not upon the area of the actual lot.

- (d) The common private way shall extend from a Town of Marion approved or accepted public way, and shall end in a cul-de-sac, as described below.
- (e) Not more than one RCP subdivision shall be created from a property, or a set of contiguous properties held in common ownership as of date of enactment. Documentation to this effect shall be submitted to the Planning Board along with the application for RCP approval. No further division of the subject property shall be permitted after the creation of the RCP.
- (f) A buffer zone of at least 200 feet in width of indigenous vegetation shall separate the structures in the development from any adjacent public way. No vegetation shall be removed from this buffer zone after the development of the residential compound, nor shall any building or structure be placed therein.

C. Criteria for Planning Board approval. The Planning Board may approve a RCP subdivision upon a determination that the RCP, as compared to ~~an orthodox~~ conventional subdivision of the same parcel, is likely to:

- (1) Reduce the number of lots having egress onto existing public ways;
- (2) Reduce the number of lots having frontage on existing public ways;
- (3) Reduce cut and fill in road construction and subdivision development and reduce removal of indigenous vegetation;
- (4) Promote public safety and welfare, particularly with regard to traffic and pedestrian safety;
- (5) Be constructed in a manner which will minimize the visual impact of the development of the subject parcel of land as viewed from the public way providing access to the RCP subdivision, or from adjacent residentially zoned properties;
- (6) Produce less irregularly shaped or contorted lot configurations; or
- (7) Promote housing affordable to persons or families of low or moderate income, as defined by the standards and criteria of the Massachusetts Department of Housing ~~&~~and Community Development.

D. Application.

- (1) The Planning Board may request the submission of all of the information required for the submittal of a definitive plan. The Planning Board, however, may waive such requirements, after considering the factors specified in Section 2 and 3 above. In that event, any plan acceptable to the Registry of Deeds may be submitted, provided that on that plan or on separate documents, the following information has been provided:
 - (a) Center line profile of proposed common private way;
 - (b) Location of any wetlands;
 - (c) Proposed drainage;
 - (d) Proposed utilities and road construction design;
 - (e) Proposed lot lines and building sites;

- (f) Scale and area of vegetative screening separating the common private way and CO lots from adjacent public way~~;~~
 - (g) Names of abutters from the latest available Assessor's records.
- (2) Such plan shall be prepared by a registered professional engineer, land surveyor, architect or landscape architect, unless this requirement is waived by the Planning Board.
- E. Filing fee. A filing fee ~~of \$1,000~~as set forth in the Planning Board Fee Schedule in Appendix A shall be submitted with the application form to cover costs of processing and initial engineering review. In the event that the Board determines that unusual or exceptional circumstances necessitate expert technical review that exceeds the cost of the filing fee, the cost of obtaining such expert technical review ~~that exceeds the cost of the filing fee, the cost of obtaining such expert technical review~~ shall be paid by the subdivider.
- F. Conditions. Any plan approved as an RCP must contain or refer to recorded covenants regarding each of the following:
 - (1) The common private way shall remain permanently a private way, which shall not be extended.
 - (2) The common private way shall not be connected to any other way except where it originates on a public way.
 - (3) The lots shall obtain access from the common private way if, and only if, ownership of the lot provides membership in an automatic membership homeowners' association, in a form acceptable to the Planning Board, which association shall be responsible for all maintenance and snow removal of or from the common private way. The homeowners' association shall retain all rights in the common private way.
 - (4) The common private way does not meet the standard of the Town for acceptance for new ways and shall not be proposed for such acceptance.
 - (5) Owners of lots in the RCP shall be subject to betterments for the common private way, payable to the Town.
 - (6) The homeowners' association shall indemnify, hold harmless and release the Town from liability for any damages resulting from any action brought by a third party or the association in any court due to the repair, use or maintenance of the common private way.
- G. Common private ways. Common private ways shall have:
 - (1) A staging area to promote ease of access from the common private way to the abutting public way, and to provide for the proper discharge of water from the common private way onto the abutting public way. The staging area shall be at least 40 feet in length from the pavement on the public way, with a minimum width of 18 feet of pavement in accordance with the Subdivision Regulations, and sloped not more than four ~~4%-percent~~ grade for the 40 feet it extends from the pavement on the public way.
 - (2) A center line intersection with the street center line of not less than 60%.
 - (3) A roadway surface, on that portion of the common private way extending beyond the staging area, of a minimum of six inches of graded gravel, placed over a properly prepared base, graded and compacted to drain from the crown; provided, however, that the applicant may seek a waiver of this provision upon a demonstration that alternative construction standards meet the access and safety standards of this provision. Any subsequent change to the roadway surface

after the construction of the RCP shall require a modification of the endorsed plan pursuant to MGL c. 41, § 81W.

- (4) Proper drainage appurtenances, where required, to prevent washout and excessive erosion, with particular attention to the staging area to provide for the proper discharge of water from the common private way onto the abutting public way.
 - (5) A roadway surface, on that portion of the common private way extending beyond the staging area, with a minimum width of 16 feet for its entire length, and a minimum right-of-way width of 25 feet for its entire length.
 - (6) A turnaround or cul-de-sac of not less than 30 feet in depth and 40 feet in width provided at the terminus.
 - (7) A buffer zone of not less than 30 feet in width of indigenous vegetation separating the common private way from any preexisting residential lot line.
- H. Processing and decision. The Planning Board shall review a RCP in accordance with the procedures set forth in § 300-3.3. The Planning Board shall render a decision regarding a RCP in accordance with the provision of MGL c. 41, § 81U and § 300-3.3 herein. To the extent that the RCP is designed with lesser requirements for road width, right-of-way width, and the like, such lesser requirements shall be considered as waivers from the otherwise applicable requirements of § 300-3.3 for definitive plans.

ARTICLE IV Design Standards

§ 300-4.1. Streets.

- A. Nonresidential subdivisions. General criteria for nonresidential subdivisions can be found in Article IX of the Town's Zoning Bylaws.
- B. ~~Residential subdivisions.~~ for residential subdivisions. General criteria- The number of home sites used to determine the appropriate width of traffic lanes and sidewalks/bike paths shall be based upon the number of potential home sites serviced by the proposed road.

		Local Street	Secondary Street	Sidewalk (on one side)
Right-of-way		50 feet	60 feet	
Traffic lanes				
	1 to 10 home sites	2 9-foot lanes	2 12-foot lanes	Not required
	11 to 20 home sites	2 10-foot lanes	2 12-foot lanes	Required
	21 to 30 home sites	2 11-foot lanes	2 12-foot lanes	Required
	Over 34 30 home sites	2 12-foot lanes	2 12-foot lanes	Required
Paved shoulders		None	2 6-foot shoulders	
Park strips (minimum)		2 5-foot strips	2 6-foot strips	
Sidewalks/Bike path		1 6-foot path	1 8-foot path	
Utility strips (at sides of pavement)		2 1-foot strips	2 1-foot strips	

Town of Marion Final Draft (Red-Line)

		Local Street	Secondary Street	Sidewalk (on one side)
Maximum gradient		8% to 10%	8% to 10%	
Minimum horizontal center line radius		200 feet	400 feet	

Notes:

- a. Greater width may be required by the Board where necessary to meet present or future traffic demands.
- b. Minimum gradient of any street shall be one foot in 100 feet.
- c. Efforts shall be made to minimize the gradient of street by locating streets so that they follow contours rather than crossing contours. The gradient shall never exceed 10%.
- d. Sidewalks and/or bicycle paths and curbs will be required only in areas of the Town where the Planning Board determines them to be necessary for public safety. ~~Bike paths at~~ At the discretion of the Planning Board, bike paths may be created by delineating a special lane on a paved way. ~~"The center line grade of the proposed road at any point shall be not more than five feet above or below the existing center line grade."~~
- e. Cut or fill side slopes shall not be steeper than 3:1.
- f. All above-grade features, such as hydrants, utility poles, etc., shall be confined to the utility strip adjacent to the property line and are not to be placed in the park or green strip, no greater than 40 feet on center of both sides of the street.
- g. The number of curb cuts into the streets should be minimized by the use of common driveways serving more than one lot. Such common driveways shall have at least a ten-foot width of traveled way with suitable additional spaces provided for vehicles to be parked on each lot without blocking the common driveway.
- h. All utilities shall be underground. Cable TV shall be included.
- i. ~~"A one-hundred-foot-long leveling area shall be provided at all intersections. The leveling area will have a maximum slope of 3%.~~
- j. Guard rails shall be installed where slopes from the right-of-way exceed 1:4 and the slope exceeds five feet in height, or where required by the Board to protect vehicles from obstructions or to maintain public safety.
- k. Where changes in roadway grade exceed 1%, vertical curves shall be provided.

§ 300-4.2. Miscellaneous standards.

- A. All streets in the subdivision shall be designed so that, in the opinion of the Board, they will provide safe vehicular travel.
- B. The proposed streets shall conform to the Master or Study Plan of the Town adopted in whole or in part by the Board.
- C. All dead-end streets shall have a paved turning circle of 108 feet in diameter and a property line diameter of 120 feet with curb radii of not less than 30 feet at the entrance. The center of the circle shall be planted in low-growing vegetative cover. The width of the paved portion shall equal 1.5 times the width of the traffic lane of the straight portion of the street.
- D. Street jogs with center line offsets of less than 125 feet shall be avoided.
- E. Curves at intersecting streets shall have a tangent distance of not less than 20 feet.
- F. All reverse curves on secondary streets shall have a minimum tangent between curves of 100 feet.

- G. Streets shall be laid out so as to intersect as nearly as possible at right angles. No street shall intersect any other street at less than 70°.
- H. Property lines at street intersections shall be rounded to cut back to provide for a curb radius of not less than 20 feet.
- I. All roads shall be built such that the bottom of the gravel base lies above the probable maximum high ~~ground-water~~groundwater.
- J. Roads not yet released by the Planning Board from performance guarantee shall be maintained to standards acceptable to the Planning Board. Potholes in these roads must be repaired within two months of their report to the Planning Board (from April 1 to November 1).
- K. No land may be stripped of all vegetation and left as bare soil without approved erosion control.
- L. A twenty-five-foot no-disturbance vegetation buffer shall be maintained around wetlands, streams, ponds and vernal pools.
- M. No dead-end street shall exceed 500 feet in length.
- N. Center line offsets for intersecting streets shall not be less than 200 feet.
- O. In all cases, the center line of the paved surface shall be coincidental with the center line of the right-of-way, unless specifically excepted by the Board.
- P. Sight distance requirements at intersections shall conform to the requirements of the procedures utilizing a 3.5-foot height observer and a 0.5-foot object.
- Q. The roadway pavement shall consist of a four-inch thickness, after compaction, prepared and installed in conformity with Section 460 of the Massachusetts Department of ~~Public Works~~Transportation Standard Specifications (hereafter referred to as ~~MDPW~~MassDOT Standard Specifications). The pavement shall be spread and rolled in two courses: a 2.5-inch thickness standard base course and a 1.5-inch thickness top course, in conformity with the Specifications aforementioned.

§ 300-4.3. Easements.

- A. Easements for utilities across lots shall be provided where necessary but, where practicable, shall be centered along rear or side lot lines and shall be at least 25 feet wide.
- B. Where a subdivision is traversed by a watercourse, drainage way, channel or stream, easements as required to meet the Conservation Commission's order of conditions shall be provided.
- C. See § 300-3.3C(6), Common land and ways," for easements covering common driveways.
- D. A separate, numbered lot, upon which a detention/retention pond(s) is located and all easements on the other lots which are pertinent to said detention/retention pond(s) themselves, shall be held by a legal entity to be formed by the applicant-owner for the benefit of owners of lots within the subdivision. The documents describing the above legal entity, which shall hold the lots and easements, shall be reviewed by the Town Counsel and shall be subject to his or her approval. The applicant-owner shall execute such legal documents as are required to effectuate the conveyances above described. Maintenance of the detention/retention pond(s), including periodic dredging, shall be a responsibility incorporated in the above-described document.

§ 300-4.4. Open spaces and protection of natural resources.

- A. Before approval of a plan, the Board shall also, in proper cases and in conformance with the most recently adopted Master Plan and Open Space Plan, require the plan to show a park or parks suitably located for recreational purposes. The park or parks shall not be unreasonable in area in relation to the land being subdivided and to the prospective uses of the land. The park shall be located on a separate lot under common ownership and shall be labeled as ~~non-buildable~~nonbuildable.
- B. No change shall be made in the contour of the land that adversely affects the land abutting the proposed subdivision.
- C. All possible steps shall be taken to preserve all natural features, such as, but not limited to, desirable and mature trees and shrubs, watercourses, scenic views and vistas, open space, historic spots, the habitat of species listed as rare, endangered, or of special concern by the Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement, Natural Heritage and Endangered Species Program, and similar community assets, which, if preserved, will add attractiveness and value to the subdivision. It is the intent of the Planning Board with these provisions to preserve any especially large or unusual species of plants. Property within any overlay district must meet the requirements of the district.

§ 300-4.5. Floodplain protection.

Within the floodplain area of the one-hundred-year flood as shown on the map ~~entitled "Flood Insurance Rate Map (FIRM), Town of Marion, revised February 17, 1988"~~referenced in Chapter 230, Zoning, § 230-3.2B, or more recent updates hereby made part of these regulations and on file at the office of the Town Clerk, the following requirements shall apply:

- A. All subdivision proposals shall be consistent with the need to minimize flood damage.
- B. All public utilities and facilities shall be located, elevated and constructed to minimize or eliminate flood damage. All utilities shall be ~~flood-proofed~~floodproofed so as to prevent short-circuiting of electrical conduits, contamination of water supply by floodwater or contamination of water by sewage or other infiltration.
- C. All roads built in the Velocity Zone shall be permeable and shall have a second means of egress that shall not lie within a Velocity Zone.
- D. Lots shall be of sufficient area and of such shape and location so that anticipated new structures will be able to be safely sited within areas of each lot so that the lowest floor (including basement) is elevated to or above the level of the one-hundred-year flood in accordance with the State Building Code.
- E. Details of proposed grading and drainage shall be provided for all lots located in floodplain areas to ensure that flood protection is maintained and that flood damage is not increased in adjacent existing and proposed lots.

~~F. All public utilities and facilities shall be located, elevated and constructed to minimize or eliminate flood damage.~~

§ 300-4.6. Stormwater management.

- A. General.
 - (1) Management of stormwater runoff from all developments reviewed by the Marion Planning Board shall meet the standards and design criteria contained in this section for both flood control and non-point source pollution reduction. All assumptions, methodologies, and

procedures used to design the stormwater management system components shall accompany all site plan review and subdivision of land applications to the Planning Board.

- (2) Strict adherence to these standards may be waived by the Planning Board upon a clear demonstration by the proponent that full compliance with any specific standard would not serve the public interest or would not be practical due to physical site constraints.
- (3) All applicable standards of the Department of Environmental Protection (DEP) Stormwater Management Policy, dated March, 1997, amended January 2008, and all subsequent amendments thereto, and the (DEP) Hydrology Handbook for Conservation Commissioners dated March, 2002, as amended from time to time, shall apply as minimum standards to all plan submittals, except where this section requires more stringent standards.
- (4) The applicant shall be responsible for compliance with the Marion Board of Health and Conservation Commission requirements governing the pertinent aspects of the stormwater management system.
- (5) Prior to the release of any portion of the performance guarantee, the stormwater management system must be substantially complete, stabilized, and operational. The functionality of the system shall be evaluated by the consulting engineer and the Superintendent of the DPW. The applicant shall submit an as-built plan of the constructed stormwater management system prepared by a registered land surveyor and certified by a registered professional engineer. If the system is found to be inadequate by virtue of physical evidence of operational failure even though it was built as called for in the definitive plan, it shall be corrected before the performance guarantee is released. Examples of inadequacy shall include errors in the infiltrative capacity, errors in the maximum groundwater elevation, failure to properly define or construct flow paths, or erosive discharges from the basins.

B. Performance standards.

- (1) All design and construction shall be done in a manner such that the post-development stormwater runoff will not exacerbate or create flooding conditions, or alter surface water flow paths, resulting in impacts to the receiving wetland resource area or any adjacent properties to the site for the two-, twenty-five-, and one-hundred-year twenty-four-hour storm events. The pre-development standard shall be those conditions prevailing prior to abandoned projects or previously disturbed terrain.
- (2) The stormwater management systems shall be designed to attenuate the peak rate of the runoff for the two-, twenty-five-, and one-hundred-year twenty-four-hour storm events at or below the pre-development levels. Additional stormwater volume attenuation in excess of the required recharge volume under the DEP Stormwater Policy for these storm events may also be required for any stormwater discharges into ~~flood-prone~~floodprone areas, off-site culvert inlets, isolated topographic depressions, adjacent properties, and any receiving wetland and/or water body which may be sensitive to increases in runoff volume.
- (3) Stormwater management systems that may eventually be owned and maintained by the Town of Marion shall be designed and constructed to provide the required level of treatment at the least cost to the Town. The Planning Board, in conjunction with the Superintendent of the DPW, may, at its discretion, disapprove a plan due to what it considers to be excessive operation and maintenance (O&M) costs.
- (4) Stormwater management systems shall be designed and constructed so that they do not negatively impact groundwater quality or elevations adjacent to or ~~down gradient~~downgradient of the system area. Upon review of the specific site conditions, the Planning Board may require

a groundwater mounding analysis based on the Hantush Method and a groundwater water quality evaluation to determine the potential impacts to any adjacent sensitive receptors (i.e., drinking water supplies and basements of existing dwellings).

- (5) Stormwater management systems shall be designed and constructed so that they do not represent safety hazards or nuisances to public health as determined by the Planning Board in consultation with the Board of Health.
- (6) Stormwater management systems shall be designed and constructed so that they do not visually detract from the neighborhood. A landscape design shall be prepared that provides appropriate screening from the adjacent properties and roadways, while providing the degree of access necessary for O&M activities. Landscape plans shall be submitted that appropriately address visibility issues through proper placement, preservation of existing natural vegetation and supplemental plantings where necessary.

C. Submittal requirements.

- (1) All site plan and definitive subdivision submittals shall be accompanied by a stormwater management system report. At a minimum, the report shall consist of the following:
 - (a) Hydrologic calculations for the two-, twenty-five-, and one-hundred-year twenty-four-hour storm events based on the TR-20 Methodology for the pre- and post-developed conditions for the overall project as well as specific calculations for the two-, twenty-five-, and one-hundred-year twenty-four-hour storm events also based on the TR-20 Methodology for each specific ~~area~~ area subject to flooding, including but not limited to isolated depressions, culvert inlets, and ponding areas for the pre- and post-developed condition.
 - (b) Supporting water quality calculations, specific BMP sizing calculations, and a stormwater management form stamped by a registered professional engineer shall also be provided.
 - (c) Discussion of the environmental and hydrological conditions of the site for the pre- and post-developed condition, as well as the proposed alterations of the site, all proposed components of the stormwater management system and low-impact development (LID) consistency summation outlined in Subsection D(8)(c).
 - (d) Soil evaluation logs, permeability test results and predicted maximum groundwater levels at each component of the stormwater management system validated by ~~a~~ representative an agent of the Board of Health and/or the Planning Board. On-site permeability tests may be required to determine the appropriate infiltration value from Table 2.3.3 of the DEP Stormwater Management Policy.
 - (e) An operation and maintenance plan for the stormwater management system. The plan shall include a maintenance schedule for each component of the stormwater management system, an outline of responsible parties and owners, and all pertinent agreements to be executed to insure proper maintenance of the facilities.
- (2) Pre- and post-development watershed plans at a preferred scale of one-inch equals 40 feet shall be submitted with the stormwater management system report and shall clearly depict the following information:
 - (a) Pre-development watershed plan.

- [1] The location of all surface waters, wetland resource areas, and all other state/federal jurisdictional resource areas on or within 100 feet adjacent to the site. The boundaries of all such resource areas shall be verified to be accurate by the Marion Conservation Commission.
 - [2] The delineation of the one-hundred-year flood elevation as indicated on the Federal Emergency Management Act (FEMA) maps. If FEMA maps do not exist or if the one-hundred-year flood elevation of the water body or watercourse is not indicated on the FEMA map, the elevation shall be calculated, utilizing the ~~U.S.~~ Army Corps of ~~Engineers~~ ~~Engineers'~~ HEC ~~flood-water~~ floodwater modeling methodology or the SCS TR-20.
 - [3] Existing topography at a two-foot contour interval within the watershed study area. Areas with less than a 1.0% grade shall be shown at a one-foot contour interval with existing spot grades.
 - [4] Delineation of the existing watershed boundaries on the property, inclusive of all off-site areas contributing runoff to the property.
 - [5] Boundaries of existing surficial ground cover conditions within the watershed study area in order to verify the runoff curve number (Cn).
 - [6] Prevailing soil types on the site and the hydrological soil groups based on the most current Natural Resource Conservation Service soils map. The provisional soil mapping at the NRCS office in Wareham shall be used in place of the published 1967 Plymouth County mapping.
 - [7] Flow paths and design points for each watershed with each segment of the flow path defined.
 - [8] Areas subject to flooding, including but not limited to isolated topographic depressions, culvert inlets, and ponding areas with the calculated one-hundred-year flood elevation associated with each area.
 - [9] The location of any public or private water supplies on the property or within 100 feet of the property location, including any mapped Water Resource Protection Overlays (i.e., Zone II, IWPA.)
 - [10] Location of soil test pits and groundwater elevations.
- (b) ~~Post-~~development watershed plan.
- [1] Existing and proposed topography at a two-foot contour interval within the watershed study area. Areas with less than a 1.0% grade shall be shown at a one-foot contour interval with existing spot grades.
 - [2] Delineation of the proposed watershed boundaries on the property, inclusive of all off-site areas contributing runoff to the property.
 - [3] Boundaries of proposed surficial ground cover conditions within the watershed study area, including roadway areas, building footprints, driveways, lawn/landscaped areas and areas to remain in their natural condition in order to verify the runoff curve number (Cn).
 - [4] Prevailing soil types on the site and the hydrological soil groups based on the most current Natural Resource Conservation Service soils map. The provisional soil

mapping at the NRCS office in Wareham shall be used in place of the published 1967 Plymouth County mapping.

- [5] Flow paths and design points for each watershed with each segment of the flow path defined.
- [6] Areas subject to flooding, including but not limited to isolated topographic depressions, culvert inlets, and ponding areas with the calculated one-hundred-year flood elevation associated with each area as a result of development in the watershed.
- [7] Location of soil test pits, permeability tests, and groundwater elevations for each component of the proposed stormwater management system.
- [8] The proposed development layout, including the locations of roadways, parking areas, limits of land alteration, undisturbed areas, state/federal jurisdictional wetlands, floodplains, drainage collection systems and stormwater management facilities.

D. Design criteria.

(1) General.

- (a) The criteria presented herein are provided to assist the designer by identifying minimum requirements, general procedures to be followed as well as specifying any limitations regarding the types of systems to be allowed. The designer is responsible for ensuring that the design complies with the performance standards enumerated in Subsection B above as well as conformance with state and federal requirements and with accepted engineering practice.
- (b) All runoff from storms up to the one-hundred-year storm event must flow through the stormwater management/treatment systems. Systems for the proper conveyance of the predicted one-hundred-year storm to the stormwater management/treatment systems shall be provided.

(2) Location.

- (a) ~~Storm-water~~Stormwater management systems (exclusive of the conveyance system) shall be located on a separate and segregated parcel specifically designated for such use, to be conveyed to the Town should Town acceptance of the subdivision roadway and infrastructure be contemplated. Provisions for vehicular access shall be provided at the circumference of each system. Components of the collection system such as drainage piping, ditches, swales, and certain LID components etc. may be located within access/utility easements. Provisions for vehicular access shall be provided along the entire length of storm drain lines and swales within all designated access/utility easements.
- (b) The following minimum setback requirements shall apply to all stormwater management systems. Any of these setback distances may be waived by the Board upon a clear finding that the proposed stormwater management system will utilize the preferred LID structural stormwater best management practices on a LID scale through decentralization and dispersion.

[1] Property line: 25 feet.

[2] Street line: 50 feet.

- [3] Underground utilities: 20 feet.
- [4] Private well: 100 feet.
- [5] Subsurface sewage disposal system: 100 feet.
- [6] Dwelling: 100 feet.
- [7] Surface water body: 50 feet.
- [8] Bordering vegetated wetland: 25 feet.

(3) Soil testing.

- (a) Soil testing to determine the maximum groundwater elevation and soil profiles shall be performed by a Massachusetts approved soil evaluator or certified soil scientist and verified by the Board of Health and/or ~~a representative~~ an agent of the Planning Board. At the discretion of the Board, soil permeability testing may be required if the initial soil logs exhibit variable soil conditions and inconsistent groundwater profiles.

- (b) Investigations.

- [1] Subsurface investigations for infiltration practices are required to define the suitability of soils for subsurface disposal of stormwater runoff. These explorations are necessary to determine the textural characteristics of the various soil strata, restricting layers, location of the seasonal high water table elevation and depth to bedrock in the location of the proposed system.
- [2] The soil investigation must include an identification of the soil through examination of the soil profile in the location of the proposed system. In addition, the following determinations must be included in the investigation:
 - [a] Soil textures, measurement of soil permeability rates, soil hydrologic group, estimation of seasonal high water table elevation by identifying soil gleying and mottling, and identification of any restricting layer(s).
 - [b] Acceptable testing methods to determine the soil suitability for infiltration practices are the ~~Falling Head Permeameter Test (ASTM D5126)~~ falling head permeameter test (ASTM D5126-90) or the ~~Double-Ring Infiltrometer~~ double ring infiltrometer (ASTM D3385-03/D5093-02). Soil test pits shall be excavated to a depth no less than five feet below the design bottom of the system or to the static water level, to inspect and describe the soil profile. A minimum of one inspection pit must be dug per 5,000 square feet of system bottom area and must be located within the perimeter of the system.

- (c) The infiltration values utilized in the TR-20 calculations to determine the size of the infiltration structure shall be based on the DEP Stormwater Management Policy Volume 3, Chapter 1, Recharge Requirements Table 2.3.3.

(4) Calculations.

- (a) Rainfall data shall be as determined from the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 dated September 30, 2015, providing precipitation data for New England and New York, or the document with the most recent date. ~~Atlas of~~

~~Precipitation Extremes for the Northeastern United States and Southeastern Canada published in 1993 by Cornell University.~~

- (b) The use of the Rational Method for volume-related calculations is not permitted.
 - (c) In areas where the actual on-the-ground soil evaluations exhibit subsurface conditions inconsistent with the NRCS mapping, or in cases where the site has been extensively reworked, the hydrologic soil group (HSG) curve number (CN) values utilized in the TR-20 calculations should be adjusted to reflect the actual on-the-ground cover conditions based on the determination by the Massachusetts-approved soil evaluator or certified soil scientist.
 - (d) The analysis points for the hydrologic study shall be at the edge of the wetland resource area boundary, adjacent property line, existing storm drain system, or other sensitive receptors such as adjacent agricultural uses. For each pre-development analysis point there shall be a corresponding post-development point.
 - (e) For all infiltration facilities, a groundwater mounding analysis based on the Hantush method for the required design storms shall be prepared by a professional engineer or hydrologist. The applicant shall assess the potential effects from the subsurface disposal of stormwater on adjacent road surfaces, private wells, building foundations, embankments and any other site features that may be sensitive to groundwater flow.
 - (f) The sediment forebay volume below the elevation of the spillway to the detention/retention stage cannot be utilized as available flood storage volume or recharge volume for purposes of sizing the detention/retention basin.
- (5) Treatment required.
- (a) The discharge of untreated stormwater runoff from the developed areas of the property is prohibited.
 - (b) Stormwater management systems shall be designed to treat the first flush volume of the entire project site at full build out and shall achieve an ~~80%~~eighty-percent TSS removal rate of the total suspended solids at the point of discharge. The first flush volume is a function of the initial 1.25 inches of stormwater runoff from impervious surfaces. The first flush treatment volume in cubic feet (Vt) is determined by the following formula:

$$Vt = (1.25/12 \text{ inches}) (Rv)(\text{Site Area in Square Feet})$$

Where $Rv = 0.05 + 0.009(I)$ and I = the % impervious area. "Impervious area" is defined as any man-made cover that is not vegetated.

- (c) Any development in the Sippican Harbor and Wings Cove watershed areas shall incorporate a physical treatment processes to remove nitrogen at a minimum efficiency rate of 40%. Development in the Mary's Pond watershed shall incorporate phosphorus removal at a minimum design rate of 50%.
- (6) ~~Above-ground~~Aboveground basins.
- (a) All water quality basins/ponds shall have a sediment forebay consisting of a separate cell separated from the detention/retention stage by a rock fill filter berm to allow lateral flow into the lower stage. The top elevation of the filter berm shall be at or below the elevation of the inlet piping.

- (b) A gravel access drive not less than 12 feet wide shall be provided around the outer perimeter of all basins to allow for vehicular access.
- (c) The maximum depth of the sediment forebay shall be no greater than two feet.
- (d) Where appropriate, the interior side slopes of all basins shall be no greater than 4:1 but in no case less than 3:1. Exterior side slopes of the embankment shall be no greater than 3:1.
- (e) The bottom elevation of the basin shall be no less than two feet above the maximum groundwater table elevation or bedrock and shall be at least one-foot above the elevation of the receiving wetland.
- (f) The calculated peak water levels within the basin for all design storms shall be no greater than three feet and shall be no less than 12 inches below the elevation of the containment berm.
- (g) The entire detention basin area shall be treated with a four-inch layer of screened organic soil borrow conforming to Massachusetts ~~MHD~~ Highway Department ~~(MHD of Transportation)~~ (MassDOT) Specifications M1.07.0. The side slopes shall be seeded with an erosion seed mix conforming to ~~MHD~~ MassDOT Specifications M6.03.1. The basin bottom shall be seeded with a New England erosion control/restoration mix as manufactured by New England Wetland Plants, Inc., or approved equal, applied at a rate of 35 ~~lbs/pounds per~~ lbs/pounds per acre and supplemented by landscape plantings. Infiltration basins shall be treated with four-inch layer of screened organic soil borrow conforming to Massachusetts ~~MHD~~ Highway Department ~~(MHD of Transportation)~~ (MassDOT) Specifications M1.07.0 and planted with a water-tolerant grass seed mix.
- (h) The maximum allowable ponding or storage time for infiltration basins for design storms up to the twenty-five-year storm event is 48 hours. For the one-hundred-year storm event, the maximum drain time shall be 72 hours.
- (i) The bottom elevation of the infiltration basin shall be no less than two feet above the maximum groundwater table elevation or bedrock and shall be at least one-foot above the elevation of the receiving wetland.
- (j) Infiltration basins may be constructed in fill, providing that a minimum four-foot layer of naturally occurring soil meeting the infiltration requirements of this section is available below the bottom of the basin and that the fill material is a clean granular fill conforming to 310 CMR 15.255(3-~~4~~). Construction in fill shall mean any system where fill is required to replace topsoil, subsoil, peat, or unsuitable soil layers above the requisite four feet of naturally occurring soil.
- (k) Recharge structures shall be provided at the bottom of the infiltration basin to ensure adequate recharge is provided under frozen ground cover conditions.
- (l) All infiltration basins must be provided with an overflow mechanism to a receiving wetland or ~~waterbody~~ water body. Access/Utility easements must be provided along the designated overflow path to the receiving wetland or ~~waterbody~~ water body. All infiltration basins must have an outlet structure with an accessible flap valve to allow manual drainage of the basin in an emergency condition, ~~non-erosive~~ nonerosive flows at the outlets, inlet splash pads and emergency spillway weirs. Outlet structures and all inlet and outlet piping 18 inches or greater in diameter shall be fitted with trash racks.

- (m) Infiltration practices are limited to soils in Hydrologic Soil ~~Group~~Groups A, B and C only, as identified by the most recent NRCS Soil Survey mapping. The provisional soil mapping at the NRCS office in Wareham shall be used in place of the published 1967 Plymouth County mapping. ~~Drywells~~Dry wells for individual residential dwellings and small LID technologies such as rain gardens, ~~bio-retention~~bioretention cells and infiltration strips may be permitted in Hydrologic Soil Group C soils, providing the minimum infiltration rate of 0.50 ~~inches~~inch per hour can be achieved.
 - (n) Detention and infiltration basins may not be located within the VE Zone as depicted on the map entitled, "Flood Insurance Rate Map, Town of Marion," which is in effect at the time of application.
- (7) Subsurface recharge systems.
- (a) Subsurface recharge systems may be used on subdivisions consisting of five lots or less, commercial and industrial site developments. All infiltration systems including ~~above ground~~aboveground basins and subsurface recharge must be provided with a pretreatment system capable of removing 80% of the total suspended solids (TSS) loading from the contributing watershed area. Subsurface recharge systems are not allowed on residential subdivisions in excess of five lots or land uses with a high-- potential pollutant load as defined in the DEP Stormwater Management Policy.
 - (b) Infiltration practices are limited to soils in Hydrologic Soil ~~Group~~Groups A, B and C only, as identified by the most recent NRCS Soil Survey mapping. The provisional soil mapping at the NRCS office in Wareham shall be used in place of the published 1967 Plymouth County mapping. ~~Drywells~~Dry wells for individual residential dwellings and small LID technologies such as rain gardens, ~~bio-retention~~bioretention cells and infiltration strips may be permitted in Hydrologic Soil Group C soils, providing the minimum infiltration rate of 0.50 ~~inches~~inch per hour can be achieved.
 - (c) The bottom elevation of the subsurface recharge system shall be no less than two feet above the maximum groundwater table elevation or bedrock.
 - (d) The maximum allowable ponding or storage time for recharge systems for design storms up to the twenty-five-year storm event is 48 hours. For the one-hundred-year storm event, the maximum drain time shall be 72 hours.
 - (e) Subsurface recharge systems may be constructed in fill, providing that a minimum four-foot layer of naturally occurring soil meeting the infiltration requirements of this section is available below the bottom of the basin and that the fill material is a clean granular fill conforming to 310 CMR 15.255(3-~~7~~). Construction in fill shall mean any system where fill is required to replace topsoil, subsoil, peat, or unsuitable soil layers above the requisite four feet of naturally occurring soil.
 - (f) Subsurface recharge systems located under paved parking areas shall be designed to an H-20 vehicle loading.
 - (g) The entire area of the proposed subsurface recharge system shall be roped off during construction to prevent compaction of the underlying soils by heavy equipment. The basin shall be excavated with light earth-moving equipment to prevent compaction of soils beneath the basin floor or side slopes. Light earth-moving equipment does not include bulldozers or standard--size pay loaders.

- (h) Proper soil erosion and sediment control methods must be used during and after development of the site. Stormwater runoff shall not be allowed into any infiltration basin or recharge structure until the entire contributing watershed area has been stabilized with vegetation and other soil erosion and sediment control techniques.
 - (i) Under no circumstances shall any infiltration basin or subsurface recharge system be utilized as temporary sediment traps or stormwater management during construction.
 - (j) Subsurface recharge systems shall consist of precast concrete or HDPE galleys, or large ~~1~~-diameter perforated HDPE pipe. The systems shall be encompassed with a 0.75-inch to 1.5-inch double-~~1~~-washed stone conforming to 310 CMR 15.247(1) and wrapped in filter fabric. An individual recharge system for each catch basin inlet or pair of inlets is preferred over a single recharge facility serving multiple inlets. Direct connections from the catch basin inlets to the recharge systems are not permitted. Proprietary treatment systems may be considered in order to satisfy the TSS removal target prior to discharge into the subsurface recharge system.
 - (k) For each line of subsurface galleys or trenches, a minimum of two inspection manholes for access and maintenance shall be provided at opposite ends of each line. The maximum length of each trench/galley line shall not exceed 50 feet. Multiple trench/galley lines shall be separated by a distance not less than three times the effective width or depth, whichever is greater.
 - (l) Individual recharge systems shall be interconnected with an overflow pipe to a ~~down~~ gradient~~down~~gradient outfall device to prevent flooding of the roadway and adjacent properties in the event the design storm is exceeded or hydraulic failure of the infiltration structure.
- (8) Low-~~1~~-impact development techniques.
- (a) Low-impact development (LID) techniques to manage stormwater shall be considered for new construction/redevelopment of all commercial and industrial site development projects and residential projects. Designs that reduce impervious surfaces and employ decentralized stormwater management systems that involve the use of small treatment and infiltration devices throughout the site in place of a centralized system of closed pipes and a single large facility are preferred.
 - (b) Effective low-~~1~~-impact development includes the use of both ~~non-structural~~nonstructural and structural stormwater best management practices (LID-BMPs). The use of these BMPs is governed by certain ~~principals~~principles, objectives and requirements. The maximum practical use of the following seven ~~non-structural~~nonstructural strategies shall be considered:
 - [1] Protect areas that provide water quality benefits or areas particularly susceptible to erosion and sediment loss.
 - [2] Minimize impervious surfaces and break up or disconnect the flow of runoff over impervious surfaces through the use of vegetative filter strips and buffers.
 - [3] Minimize the decrease in the pre-construction time of concentration.
 - [4] Minimize land disturbance activities including clearing and grading and preserve naturally vegetated areas.

- [5] Provide low-~~ma~~intenance landscaping that promotes retention and planting of native vegetation and minimizes the use of lawns, fertilizers, and pesticides.
 - [6] Provide vegetated open channel conveyance systems which discharge into and through stable vegetated filter strip areas.
 - [7] Provide preventative source controls.
- (c) The applicant shall prepare a low-impact development (LID) consistency statement showing how the above strategies have been incorporated into the developments design in the stormwater management report. For each of the above strategies that were not able to be incorporated into the design due to physical site constraints, engineering, environmental, or safety reasons, the applicant must provide a basis for this contention.
- (d) Preferred structural stormwater best management practices such as rain gardens, bioretention areas, sand filters, and infiltration strips provide storage, infiltration, and treat runoff close to its source. Other standard best management practices such as ~~drywells~~dry wells, infiltration systems, surface and subsurface detention basins can all be done at an LID scale by downsizing and addressing stormwater runoff close to its source and dispersing these systems throughout the development site.
- (e) Commercial and industrial site development projects shall provide preventative source controls to prevent pollutants from being part of the stormwater runoff. Source controls such as the prevention and containment of spills and other harmful accumulations of pollutants as well the management of trash and debris shall be incorporated into all commercial and industrial site development plans.
- (9) Proprietary treatment devices.
- (a) A proprietary treatment device is a prefabricated stormwater treatment structure utilizing settling, filtration, absorptive/adsorptive materials, vortex separation, and/or other appropriate technology to remove pollutants from stormwater runoff.
- (b) These devices are allowed for new construction and redevelopment projects on privately owned commercial/industrial land development sites. The operation and maintenance of these proprietary treatment devices will be the obligation of the owner of the facility being served. These devices may also be considered on real estate subdivisions upon a clear finding by the Board that no other practical alternative is available to achieve the water quality treatment goals of these rules and regulations.
- (c) On-line devices must be fitted with an overflow bypass for storm events exceeding the stormwater quality design storm.
- (d) The specified devices shall be furnished by a manufacturer regularly engaged in such work and who has furnished similar installations in the Commonwealth of Massachusetts and had them successful and continuous operation for a minimum period of five years. Devices which have been evaluated and assigned a TSS removal efficiency by the DEP through the Massachusetts Strategic Envirotechnology Partnership (STEP) program are approved for use in the Town of Marion. Other proprietary technologies will be evaluated by the Board on a case-~~by~~-case basis in accordance with the DEP Technical Guide for Compliance with the Massachusetts Stormwater Management Standards Volume 2-~~3~~, Chapter 4.
- (e) Manufacturers' documentation on similar systems, including but not limited to data on performance testing, service history, TSS removal efficiency, sizing criteria, and

operation/maintenance requirements of the specified devices, shall be submitted to the Planning Board.

- (f) Approval of proprietary devices will be based on the following:
 - [1] Optimal TSS removal efficiency.
 - [2] Minimal operation and maintenance costs.
 - [3] Compatibility with existing infrastructure, other BMP devices and physical site constraints.
 - [4] Frequency of maintenance and special handling or installation techniques.
 - [5] Special equipment required for maintenance and the capability of the Department of Public Works to provide maintenance service.
 - [6] Reliability of performance data and potential failure rates.

E. General landscaping guidance.

- (1) All submittals shall be accompanied by a stormwater management system landscaping plan prepared by a landscape architect registered in the State of Massachusetts. At a minimum, the landscaping plan shall consist of the following:
 - (a) Plan views of each stormwater management system with detailed planting locations identified by specie and count. The wetted hydrologic zones within and around the basins should be identified and noted on the plan views. The planting species should be selected based on the frequency and depth of inundation within the hydrologic zones.
 - (b) A detailed planting schedule table identifying the size and type of species planted and individual plant counts.
 - (c) Notation specifications describing the site preparation activities, soil amendments, and procedures for plant installation. Specifications should also address the type of materials (e.g., balled and burlap, bare root, containerized); time of year of installations, sequence of installation of type of plants; fertilization, stabilization seeding, watering and general care.
 - (d) Maintenance program consisting of inspection intervals, mulching frequency, removal and replacement of dead and diseased vegetation, watering schedule, repair and replacement of staking and wires, removal and eradication of invasive species.
- (2) Planting plan design considerations.
 - (a) Native plant species are preferred over exotic or foreign species because they are well adapted to local on-site conditions and require little or no soil amendments. Existing natural vegetation is to be preserved where possible and enhanced with native plant species. Plantings requiring routine or intensive chemical applications are not permitted.
 - (b) Appropriate plantings should be selected based on the zone's hydric tolerance. Planting locations should be random and consistent with the surrounding native vegetation.
 - (c) Trees, shrubs and/or any type of woody vegetation are not allowed on basin embankments. Herbaceous embankment plantings should be limited to 10 inches in height. Trees and shrubs should be planted at least 25 feet away from any perforated

pipes and principal spillway structures. Trees and shrubs known to have long taproots should not be planted within the vicinity of any earth embankments or subsurface drainage facilities.

- (d) Inflow and outflow channels and southern exposure areas of any permanent pool areas should be shaded to reduce thermal warming.
- (e) Aesthetics and visual characteristics should be a prime consideration in the landscaping plan. Desirable views should be framed and maintained while unattractive views should be effectively screened from any adjacent residences and roadways.

F. Stormwater collection systems.

(1) Design criteria.

- (a) The quantity of ~~storm-water~~stormwater carried by storm drains shall be determined by the Rational Method on the basis of a ~~25~~twenty-five-year-frequency design storm. The inlet capacity and spacing for catch basins shall be designed to limit the flow in the gutter during a twenty-five-year design storm to a maximum of four feet in width as calculated utilizing methodologies described in "Drainage of Highway Pavements, Hydraulic Engineering Circular No. 12, as published by the U.S. Department of Transportation, Federal Highway Administration. In any event, water shall not be allowed to run for more than 300 feet on paved surfaces. Computations for drainage requirements shall be prepared by a registered professional civil engineer and submitted with the definitive plan.
- (b) Supporting data for the sizing of the storm drain collection system shall include the following:
 - [1] Subcatchment area plan at a clear legible scale showing the following information:
 - [1] Existing and proposed contour grading at the predicted full build out of the subdivision.
 - [2] Existing and proposed ground cover conditions.
 - [3] Predicted flow paths and delineation of subcatchment areas to each inlet.
 - [4] Rational Method calculations based on the twenty-five-year storm event and the one-hundred-year storm event where the collection system is expected to convey the one-hundred-year storm flows to the receiving stormwater management facility.
 - [5] Time of concentration (Tc) worksheets based on TR-55 methodology.
 - [6] Weighted average ground cover coefficient (C) calculations.
 - [7] Inlet grate capacity calculations based on Hydraulic Engineering Circular #12.
- (c) The system may make use of gutters, inlets, culverts, catch basins, manholes, subsurface piping, surface channels, and open detention basins. Leaching catch basins will not be permitted. The Board will not approve any design or component, which, in its opinion, does not meet the standards of good engineering practice, will not function without frequent maintenance, or is unsuited to the character of the subdivision.
- (d) Where feasible, ~~storm-water~~stormwater should be directed to enter the nearest open stream channel. At all outfalls of drainage systems, a reinforced concrete headwall or

reinforced concrete flared end shall be provided. ~~Storm-water~~Stormwater shall not be permitted to cross any roadway upon the surface but must be piped underground.

- (e) In general, the design of pipes shall be such as to provide for a flow of water at speeds between two feet per second and 10 feet per second under full flow conditions. The minimum grade shall be not less than 0.5% and the minimum pipe diameter shall be 12 inches, designed to flow full with the hydraulic gradient at the crown.
- (f) Storm drains with Class III RCP pipe shall have a minimum of three feet of cover. Drains with less than three feet of cover shall use Class V RCP pipe. In no event shall drains have less than 2.0 feet of cover. All changes in pipe class shall be noted on the plan. In determining the capacity of the pipe drains, the Manning formula shall be used with coefficient of friction "n" equal to 0.013 for RCP.
- (g) Catch basins shall have a minimum four-foot sump below the invert and coated with bituminous waterproofing. Catch basins or inlets shall be spaced along both sides of a street at no greater than three-hundred-foot intervals, and located at all low points and corner rounding at street junctions. Drain manholes shall be located at every change of direction and/or grade but in no cases greater than 300 feet apart. Catch basins shall not serve as manholes. All pipes from catch basins must flow to manholes.
- (h) Roof drains, cellar drains or any other "private" non-preexisting drainage systems will not be allowed to connect to the drainage system, unless specifically waived by the Board.
- (i) Cross culverts and drainage control facilities shall be based on all storms up to a one-hundred-year-frequency storm. At cross culverts, drainage easements shall be established ~~up gradient~~upgradient of the culvert and delineated on the definitive plan based on the projected one-hundred-year headwater elevation. The determination of the headwater elevation shall be based on TR-20 model calculations and the Federal Highway Administration Hydraulic Engineering Circular No. 5 (HEC 5).
- (j) In some cases, earth and stone-paved open channels should be used. The typical section of the earth channel should have a flat bottom and side slopes of one vertical on three horizontal with the top of the slope at least one foot higher than the design water surface. The maximum velocity allowed in an open earth channel at design flow should be six fps. A coefficient of friction "n" equals to 0.025 maximum should be used for both the earth and stone-paved channels. Detailed calculations, plans and profiles showing proposed channels and treatment of channel base and side slopes shall be submitted for Planning Board approval.
- (k) Wherever drainage systems within the subdivision are located in or terminate in lands owned by others, proper easements in a form and content acceptable to Town Counsel shall be taken for their access and maintenance by Town personnel.
- (l) Granite curb inlets per Section M9.04 shall be installed adjacent to all catch-basins at low points and any other location granite curbing is required. If located within an area of Cape Cod berms, a minimum six feet transition curbing (granite, Type VA4) shall be installed along the curbline on both sides of the curb inlet. The Cape Cod berms shall be constructed to blend with the transition curb.
- (m) Components of the collection system such as drainage piping, ditches, swales, etc. may be located within access/utility easements. Provisions for vehicular access shall be

provided along the entire length of storm drain lines and swales within all designated utility easements.

- (n) Rip-rap spillways shall be provided at all pipe outfalls and critical areas within drainage swales or ditches subject to erosive conditions.
 - (o) The drainage design in its entirety shall minimize long-term safety issues, maintenance, and/or reconstruction requirements to the satisfaction of the Planning Board.
 - (p) All pipe crowns in manholes must match or the crown of the inlet pipe must be higher than the crown of the outlet pipe.
 - (q) No catch basins shall be installed in front of driveway or handicap ramp openings.
 - (r) All runoff from storms up to the one-hundred-year storm must flow through the drainage control facilities (detention ponds, etc.) and be mitigated prior to flowing beyond the site. Although the pipes are designed for the twenty-five-year storm, the runoff for storms up to the one-hundred-year storm must reach the drainage control facility either through the pipe systems, swales or overland with easements.
 - (s) Stormwater drainage pumping stations are not allowed.
 - (t) When in the opinion of the Planning Board, and confirmed by the reviewing independent registered professional engineer, the existing street drainage and/or downstream drainage systems are inadequate, the stormwater management system design shall maintain both rate and volume controls at pre-development levels.
- (2) Storm drainage construction requirements.
- (a) Drainage facilities shall be provided as indicated on the plan and in conformity with these regulations and the requirements of Sections 200, 220, 230 and 258 of the Commonwealth of Massachusetts Department of ~~Public Works~~Transportation Standard Specifications for Highways and Bridges~~-1995~~, herein referred to as the "Standard Specifications-".
 - (b) The drainage system shall be in place and functional and approved by the Highway Surveyor and the Planning Board at the time of the installation of the binder course pavement. Utility as-built plans of the installed drainage system must be submitted and approved by the Planning Board and the Department of Public Works prior to the installation of the binder course pavement.
 - (c) Unsuitable material below normal pipe invert shall be removed and replaced with suitable material. Unsuitable material shall not be used for trench backfill. Pipe and conduits shall be surrounded by six inches of compacted screened gravel if set in earth, and 12 inches if set in rock.
 - (d) The standard depth of catch-basins shall be four feet below the invert of the outlet. Manholes shall be constructed to the required depth at each junction point and as shown on the plan. Pipe culvert and pipe drains shall be in conformity with the requirements of Section 230 for installation of pipes.
 - (e) All drain pipes except ~~sub-drains~~subdrains shall be reinforced concrete pipe (RCP) with bell and spigot gasketed joints and shall be installed according to the size as shown on the plans. No backfilling of pipes shall be done until approval of the Department of Public Works. All drainage trenches shall be backfilled per Section 201.

- (f) Where ~~sub-drains~~subdrains are required they shall be constructed in conformance with Section 260 of the Standard Specifications. Such ~~sub-drains~~subdrains may be required by the Board following clearing and grubbing operations. No drainage pipes from roof drains, driveway drains, or other on-lot sources shall be connected to the street drainage system. Cast iron manhole covers and catch-basin grates shall be as manufactured by or equivalent to E.L. LeBaron Foundry Model No. ~~LB 268-3~~ for manholes, ~~L.F. LF-248-2~~ or LK-120A (Cascade Grate) for catch-basins. The word "DRAIN" shall be cast into the drain manhole covers.
- (g) No more than four pipe openings shall be allowed in any one manhole. Four-foot-diameter manholes will be used for drains up to 30 inches in diameter. Five-foot-diameter manholes shall be used for pipe diameters between 36 inches and 48 inches. Pipes shall not enter a manhole less than 90° of the direction of flow. All connecting lines shall have bricked inverts rounded into the direction of flow.

§ 300-4.7. Utilities.

- A. Gas, cable, TV, and electric lines shall be installed to meet the standards of the respective utility companies.
- B. All utilities shall be underground. Other portions of the utility systems that are constructed above ground shall be screened by evergreen shrubs.
- C. The utility strip shall be located on the opposite side of the street from the sidewalk.
- D. All utilities installed shall have a capacity judged by the Planning Board to meet future requirements.
- E. Utilities shall be inspected upon installation, in accordance with § 300-6.1, and approved before continuing the project.
- F. Where public sewers are required, the following design standards shall apply:
 - (1) Public sewers shall be designed according to professional engineering practices and in accordance with the requirements of the standards of the Water Department.
 - (2) Public sewers shall be not less than eight inches in diameter; house services not less than six inches.
 - (3) Manholes shall be located at every change in grade or horizontal alignment but not more than 300 feet apart.
- G. Where public water service is required, the following design standards shall apply:
 - (1) Public water mains shall be not less than eight-inch-diameter Class 52 cement-lined ductile iron pipe with push-on gasket joints.
 - (2) Connection to Town water mains shall be the subdivider's responsibility but shall be made only under the direction of the Department of Public Works Superintendent. A water permit must be obtained from the Department of Public Works prior to tapping any main.
 - (3) Water mains shall be laid in dry trenches on a twelve-inch bed of sand or approved material. Construction pipe shall be manually tamped with sand the full length of the pipe up to 1/2 the diameter of the pipe so as to eliminate any voids under the pipe.
 - (4) Water mains shall be laid to provide a minimum cover of five feet below the finished grade and a maximum of seven feet.

§ 300-4.8. Street trees.

- A. Suitable mature trees along the road should be kept where possible. Once the road has been completed, shade trees of at least two-inch caliper at diameter breast high (DBH) should be planted on average every 40 feet along each side of the road. Trees shall be located four feet beyond the edge of the curbing and shall not interfere with existing or proposed sewer or utility connections. Shade trees meeting the approval of the Planning Board shall be planted.
- B. In order to protect against the potential for all of the street trees in any subdivision to be lost to disease or insects, no more than 1/3 of the trees planted shall be of the same species.
- C. Trees planted shall have temporary labels so that inspectors can determine that the species shown on the plan have actually been planted. The applicant is responsible for assuring that all planted trees are alive at the time of final performance guarantee release. All ~~tree~~trees should be alive one year after planting.

§ 300-4.9. Future development.

In determining the design standards to apply to any particular subdivision plan, the Board shall consider the potential for future development along or off the proposed ways. The extent of the potential for future development shall be based upon the existence of developable land contiguous with the subdivision property, and of dividable lots in the subdivision property, whether or not such development ~~of~~or division might constitute a subdivision; and shall also be based upon the topography of such land or lots, and the zoning provisions and other laws applicable to such land or lots which may affect its use. The Board shall apply to the particular subdivision plan those design standards that would be applied if the adjoining land or dividable lots were developed so as to maximize the burden imposed upon the ways, utilities, and services of the proposed subdivision. The Board may waive the requirements of this section only upon the undertaking of the applicant, by covenant or otherwise, to the satisfaction of the Board, which will prevent the imposition of an increased burden upon the subdivision by future development, and also upon a finding by the Board that such waiver is in the interest of the public health, safety and welfare. -

ARTICLE V
Construction Requirements

§ 300-5.1. Sequence of work.

Prior to starting any construction activities, a registered land surveyor shall set off grade stakes along the roadway right-of-way, center line, sidelines, and sidewalks at one-hundred-foot intervals. All trees to be preserved shall be flagged. The site shall be walked with a designated ~~representative~~agent of the Department of Public Works. All construction and work sequencing shall be conducted in accordance with the following sections.

§ 300-5.2. Clearing.

- A. The entire area to be paved of each street, way, sidewalk, and/or bike path, if required, shall be cleared of all stumps, brush, roots, boulders and like material, and all trees not intended for preservation.
- B. Beneath all areas proposed to be paved, all loam or soft, spongy or otherwise undesirable material such as peat, roots, mulch or quicksand shall be removed to whatever depth it occurs.
- C. This work shall be inspected and approved as hereinafter described before continuance of the project.

§ 300-5.3. Rough grading.

- A. The entire length and width of the vehicular way shall be brought to a firm subgrade at least nine inches below the finished grade shown on the profile.
- B. The entire length and width of the sidewalk, if required, shall be brought to a firm subgrade at least nine inches below the finished grade desired.
- C. All fill or ordinary borrow for the subgrade shall consist of any firm bearing material, except loam or organic matter, meeting the approval of the DPW Superintendent and of the consulting engineer, if any.
- D. This work shall be inspected and approved as hereinafter described before continuance of the project.

§ 300-5.4. Finish grading and paving.

- A. If required, permanent stone or concrete curbing matching that of existing adjacent streets, shall be installed at a nominal height of six inches above gutter with bottom at least 12 inches below the surface of the pavement.
- B. All subgrades of vehicular ways shall be covered with at least 12 inches of well-compacted gravel to a point three inches below the finish grade shown on the profile, with a traverse pitch from center line to pavement edge of 1/4 inch per foot. All vehicular ways shall then be finished with bituminous concrete meeting ~~Massachusetts DPW~~ MassDOT current standards. Concrete ~~to~~ shall be applied in a two-inch binder core and subsequent one-inch top coat, both well rolled and compacted to maintain the pitch above noted.
- C. If required, all subgrades of sidewalks shall be covered with at least six inches of well-compacted gravel to the desired finish grade and pitched 1/4 inch per foot toward the vehicular way. The surface shall then be treated as required for vehicular ways. Where driveways cross such paved areas of sidewalks, the elevation of such driveway shall conform to the elevation of the paved sidewalk area.
- D. The subgrade under the roadway gravel base shall be a free-draining material for a minimum depth of two feet and shall conform to the requirements of Section M1.020.0 or M1.03.0 of the Standard ~~Specification~~ Specifications. Existing soils that do not conform to these requirements shall be removed.
- E. The gravel base of the roadway and sidewalks shall consist of unfrozen, hard, durable stone and coarse sand, free from loam and clay, uniformly graded, containing no stone having a diameter of more than three inches and conforming to the requirements of Section M1.03.1 of the Standard Specifications.
- F. Gradation tests (sieve analysis) and Proctor tests (optimum density) shall be performed by an approved independent testing laboratory on the material to be utilized as gravel base and shall be submitted to the Department of Public Works for review. This analysis shall be done at the expense of the subdivider in advance of applying or grading the material. The Board may, at any time during the roadway construction, require additional testing.
- G. Before the gravel is spread, the roadbed shall be sloped to a true surface, conforming to the proposed cross section of the road, and no gravel is to be spread until this subgrade is approved by the Board.
- H. Gravel for base shall be spread in two layers of equal thickness, each thoroughly rolled true to lines and grades so as to yield a total depth of 12 inches after thorough compaction. Any depression or soft spots that appear during or after rolling shall be filled with crushed bank gravel and be ~~re-rolled~~ re-rolled until the surface is true and even. Gradation and compaction tests shall be performed and submitted to the Board for review. Testing results shall be satisfactory to the Board prior to placement of the base course of pavement.

- I. All sidewalk areas shall be provided with a gravel base foundation consistent with that required for roadways. Gradation and compaction tests shall be performed and submitted to the Board for review.
- J. All frames, grates, manhole covers and water gates shall be adjusted to the proper finished grade by setting the same in a 2,500 ~~pound~~pounds per square inch concrete bed. Any depressions or irregularities in the binder pavement are to be repaired and shall be inspected by the Board's ~~representative~~agent at least one week before final paving.
- K. The binder course pavement must be swept clean of all loose material. A tack coat of emulsified asphalt shall be applied with a pressure distributor at a rate of 0.10 ~~gallons~~gallon per square yard, immediately preceding the top course paving. An environmentally safe synthetic mat specifically designed for the purpose may be substituted for the tack coat of emulsified asphalt.
- L. All roadways shall be prepared in such a manner that all manholes, catch basins, valve gates or other structures in a roadway are installed with bituminous paving around the perimeter of each such structure such that a smooth transition is maintained between the top of each structure and the road surface.
- M. If requested by the Board, compaction and plane of finished surface tests shall be performed on the top course paving once in place. All requested testing shall be performed by an independent testing laboratory at the expense of the subdivider. The Board may request remedial repairs or replacement of any portion of the pavement system if it fails to meet these and/or the Standard Specifications.
- N. The developer shall make and maintain all subdivision roadways so that any and all occupied dwelling units within the subdivision are easily accessible to all municipal and emergency services. In addition to the above requirement, the developer must comply with the following conditions to the satisfaction of the Board prior to the first day of December (the beginning of the wintering over period).
- O. All grass strips and other areas within the street right-of-way shall be covered with at least six inches of loam (depth after compaction) and planted with high-~~quality~~ grass seed. Seeding of lawn grass shall be done after building construction has been completed on the adjacent lots.
- P. This work shall be inspected and approved as hereinafter described before continuance of the project.

§ 300-5.5. Curbing.

- A. Standard Type VA-4 granite curbing with six-~~inch~~ reveal, sloped granite face curbing, or bituminous concrete curbing, if determined by the Planning Board, shall be installed along both gutter lines of all ways for their entire lengths, except that granite curbing shall be installed along said gutter lines under the following conditions:
 - (1) All finished street grades over 5%;
 - (2) All headers for catch basins (to be set back four inches from the edge of pavement);
 - (3) All street intersections on the curve and extending six feet tangential to the point of curvature and point of tangency along the sideline line of roadway at the intersection; and
 - (4) Other specific locations as determined by the Board.
- B. Granite curbing shall be set in concrete and on at least six inches of compacted bank gravel in accordance with the cross section. Straight-~~ended~~ granite curb inlet stones shall be used in all instances.

§ 300-5.6. Drainage facilities.

Drainage facilities shall be provided as indicated on the definitive plan and in conformity with the requirements of Sections 200, 220, and 230 of the ~~MDPW~~MassDOT Standard Specifications.

- A. Pipe culvert and pipe drains shall be in conformity with the requirements of Section 230 of the ~~MDPW~~MassDOT Standard Specifications for installation of pipes.
- B. No backfilling of pipes shall be done unless and until the installation has been inspected by the Town Engineer. All drainage trenches shall be filled with clean gravel borrow in accordance with Section 150 of the ~~MDPW~~MassDOT Standard Specifications.
- C. Where ~~sub-drains~~subdrains are required, they shall be constructed in conformance with Section 260 of the ~~MDPW~~MassDOT Standard Specifications. Such ~~sub-drains~~subdrains may be required by the Board following clearing and grubbing operations.
- D. No drainage pipes from roof drains, driveway drains or other on-lot sources shall be connected to the street drainage system without the express written approval of the Planning Board.
- E. Catch basins shall be constructed with cast iron frames and grates. Frames must be set in a full bed of cement mortar. Bricks shall be used between the frame and top course for grade adjustments. They shall be laid in a radial fashion with full bearing on the ring row. A maximum of two brick courses will be allowed. Frames shall be at least 265 pounds and shall be of North American manufacture. Grates shall be 24 inches square with square openings. Grates shall be no less than 210 pounds, in accordance with the Standard Specifications, and shall be of North American manufacture.
- F. Granite curb inlets shall be provided at all catch basins.
- G. Manholes shall be constructed with cast iron frames and covers. Frames must be set in a full bed of cement mortar. Bricks shall be used between the frame and top course for grade adjustments. They shall be laid in a radial fashion with full bearing on the ring row. A maximum of two brick courses will be allowed. Frames shall be at least 265 pounds and shall be of North American manufacture. Covers shall be no less than 210 pounds, in accordance with the Standard Specifications, and shall be of North American manufacture. Drain manhole covers shall be 24 inches in diameter and shall have the word "DRAIN" cast into them in letters at least three inches in height. Sewer manhole covers shall be 30 inches in diameter and shall have the word "SEWER" cast into them in letters at least three inches in height.
- H. Manholes shall have rung steps 15 inches on center built into the vertical side.
- I. After the completion of roadway work, the manhole casting shall be set flush with the designed finish grade of pavement. Catch basin grates shall be set one inch below the finished gutter. Manhole castings and catch basin grates shall not be raised until 30 days prior to final paving. If paving does not occur within said 30 days, they shall be lowered immediately. Ramping is prohibited.

§ 300-5.7. Monuments.

- A. Monuments shall conform to the standard specifications acceptable to the Massachusetts Land Court and shall be set according to such specifications. No permanent monuments shall be installed until all construction which would destroy the monuments is completed.
- B. Monuments shall be installed at all street intersections, at all points of change in direction or curvature of streets and at other points where, in the opinion of the Planning Board, permanent monuments are necessary.

- C. Permanent boundary markers shall be placed on lot boundaries. The minimal number is four: either at the four corners or two at the roadway and two at a setback distance acceptable to the Board.

§ 300-5.8. Street signs.

The applicant shall install standard street signs displaying the name of each street in the subdivision to be located so that the public can identify each street. Signs shall be equivalent in size, design and quality to those used by the Town for its streets and may be purchased ~~for~~from the Town DPW.

§ 300-5.9. Inspection and approval procedures.

- A. The applicant shall proceed with this work as previously specified and when completed he shall request inspection and final written approval of the street or way or portion that is under construction.
- B. The Planning Board shall control the construction of the streets or ways of the subdivision by inspection and approval of the work through the services of the Superintendent of the DPW, or his agent, and by the consulting engineer, if any. The necessary approvals for each step of the construction must be obtained by the applicant in the aforementioned sequence of work.
- C. The Planning Board may, in cases of minor construction or undue hardship upon applicant, waive any inspection, except that which is required for final approval, by issuing provisional approval pending full approval after the next inspection.
- D. It shall be the applicant's responsibility to notify the Board when a portion of the work is ready for inspection; and the Board shall cause said inspection to be made within seven days of receipt of such notice, Saturdays, Sundays and holidays excluded.
- E. Approval of the work inspected shall be given to the applicant by the Superintendent of the DPW before the next portion of work is commenced in the street or way, and such approval shall be forwarded to the Planning Board by the Superintendent of the DPW.
- F. If corrections are required in the work, they shall be made before approval is given for a portion and before subsequent work is ~~stated~~started, unless written authority by the Planning Board is given to proceed into the next portion of work while making the required corrections.
- G. Failure to carry out the provisions of this ~~paragraph~~section shall be cause for the Planning Board to order such work done as may be necessary to make adequate inspection and correction of the work under construction, at the expense of the applicant. -

ARTICLE VI
Administration

§ 300-6.1. Inspection.

- A. General. For the protection of the Town and future residents of the subdivision, a series of inspections during the course of construction are required to ensure compliance with the approved definitive plan and the Board's rules and regulations.
- B. Inspection requests. Inspections shall be requested by the subdivider at least four full working days in advance by written notice to the Board and its duly authorized ~~representative~~agent.
- C. Inspections required. The subdivider shall contact the Planning Board and its duly authorized ~~representative~~agent for inspections regarding the following aspects of the subdivision, at the specified times:

- (1) Erosion control: following installation of erosion control measures.
- (2) Clearing and grubbing: following completion of roadway and drainage clearing work.
- (3) Roadbeds: following excavation of the roadbed, but prior to any backfilling.
- (4) Drainage system: following installation of ~~drain pipe~~drain pipe, culverts, catch basins, and all related construction, but prior to any backfilling.
- (5) Underground utilities: following laying of electric, telephone, and fire alarm cable in roadway and to individual dwellings, but prior to any backfilling.
- (6) Finished subgrade: following installation of backfill and compaction of subgrade.
- (7) Finished gravel foundation: following application, grading, and compaction of gravel foundation.
- (8) Pavement: notice shall be given so that inspection may be conducted during and upon completion of paving.
- (9) Final inspection: following completion of roadways, permanent benchmarks, curbing, berming, walkways, grading, seeding and cleanup.
- (10) Backfilling: No water main, storm drain, catch basin, utility installation, road subgrade or foundation, or any other item of work designated for inspection, shall be backfilled or paved over until inspected and approved by the Board or its duly authorized ~~representative~~agent.

§ 300-6.2. Additional references.

For matters not covered by these rules and regulations, reference is made to MGL c. 41, §§ 81K through 81GG, inclusive, as amended.

§ 300-6.3. Amendments.

These rules and regulations or any portion thereof may be amended, supplemented, or repealed from time to time by the Board, after a public hearing, on its own motion or by petition.

§ 300-6.4. Severability.

If any section, paragraph, sentence, clause, or provision of these rules and regulations shall be adjudged invalid, the adjudication shall apply only to the material so adjudged, and the remainder of these rules and regulations shall be deemed to remain valid and effective.

§ 300-6.5. As-built plans.

Prior to final release of security, the applicant shall provide the Town with as-built plans of all roads, drainage systems, etc., on durable material from which contact print copies can be made. These plans shall show the precise locations, size, type, etc., of all required construction, as built, and shall include, but not be limited to, the components of water, sewer and drainage ~~systems~~systems, other public utilities, elevations, slopes, street layout monuments, etc., as necessary to show that design requirements have been met and changes documented. These plans shall be certified by the designing engineer that the information shown correctly represents the construction as built. In addition to the Mylar and copies of the "as built" plan, the applicant shall produce a copy of the "as built" plan on an AutoCAD system compatible with MAGIS. Prior to endorsement by the Planning Board, the applicant shall submit the approved version of the plan and 3

1/2 inch diskettes, in AutoCAD Release 14 (or any subsequent release which the Town adopts or requires) to the Planning Board for review and approval. The computer version of the definitive plan shall be identical, full size, and shall contain all information included on the plan.

300 Attachment 1

Town of Marion

Appendix A
Application Fees
Planning Board Fee Schedule

1000. PROCEDURE.

The Planning Board shall not accept an application nor schedule a public hearing unless all applicable fees accompany the plan. All application fees are ~~non-refundable~~nonrefundable. Unless otherwise set by the Planning Board, the following fees shall apply to all plans submitted to ~~it~~the Planning Board.

2000. APPLICATION FEE SCHEDULE.

<u>Item</u>	<u>Fee</u>
Approval not required	\$50 per lot
Preliminary plan	\$100 PLUS \$500 for one to five lots, or \$100 per lot for six or more lots
Definitive plan	\$200 if no Preliminary Plan/Form 2B is filed \$100 if a Preliminary Plan/Form 2B is filed PLUS \$500 for one to five lots or \$100 per lot for six or more lots NOTE: These lot fees are waived if paid at the preliminary plan stage PLUS \$1 per linear foot of roadway.
Residential compound	\$1,000 per application
Re-submissions <u>Resubmissions</u>	\$100 per change or re-signing of plans
Modification of preliminary plan	\$75 PLUS \$50 <u>for</u> each lot affected PLUS \$50 each new building lot PLUS \$50 for modification of drainage
Modification of definitive plan	\$75 PLUS \$100 <u>for</u> each lot affected PLUS \$100 <u>for</u> each new building lot PLUS \$50 for modification of a road PLUS \$50 for modification of a drainage structure
Special permit	\$175 application fee PLUS \$75 for modification or extension
Site plan review	<u>\$75 for</u> sites with 10 or fewer parking spaces \$125 for sites with more than 10 parking spaces PLUS all Planning Board expenses, including outside expenses for consultants
Repetitive petition	\$75 rehearing from ZBA

<u>Item</u>	<u>Fee</u>
Revised application	If there is an increase in lots, the difference between the original number of the lot fee and the total fee including all new lots must be paid

3000. ENGINEERING REVIEW AND CONSULTING FEE SCHEDULE.

- a. Preliminary Plan, Modification of Preliminary Plan, Modification of Definitive Plan, Modification to Special Permit:

Size	Fee
2 to 15 lots or units	\$2,000
16 to 20 lots or units	\$3,000
21 to 25 lots or units	\$4,000
Over 25 lots or units	\$5,000

- b. Initial Definitive Plan or Special Permit:

Size	Fee
2 to 15 lots or units	\$4,000
16 to 20 lots or units	\$6,000
21 to 25 lots or units	\$10,000
Over 25 lots or units	\$20,000

The Planning Board shall not accept an application nor schedule a public hearing without receipt of a \$2,000 deposit, to be used only for payment of engineering and consulting services related to the proposed project. A minimum balance of \$2,000 must be maintained in the project's account. Any money not used for review services will be returned to the applicant at the time of final covenant release.